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ROYAL COMMISSION ON MATTERS OF HEALTH AND SAFETY
ARISING FROM THE USE OF ASBESTOS IN ONTARIO

CHAIRMAN: J. STEFAN DUPRE, Ph.D.


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FINAL SUBMISSIONS

180 Dundas Street
Toronto, Ontario
Friday,
January 28, 1983



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ROYAL COMMISSION ON MATTERS OF HEALTH AND SAFETY

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FINAL SUBMISSIONS

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THE FURTHER PROCEEDINGS IN THIS INQUIRY
RESUMED PURSUANT TO ADJOURNMENT

APPEARANCES AS HERETOFORE NOTED

DR. DUPRE: Good morning, ladies and gentlemen.

I take it that the transportation system from
Kingston is behaving in the usual manner, so Dr. Uffen will be
joining us as soon as it gets him here.

Thank you for waiting.

Counsel, I understand that Mr. Starkman wishes to
make the initial final presentation?

MR. LASKIN: I believe so, Mr. Chairman.

DR. DUPRE: If you please, Mr. Starkman.

MR. STARKMAN: Thank you, Mr. Chairman.

I don't know if it's quite my wish to make the
initial final presentation, but I was drafted into it by my
colleagues and the Commission counsel.

Mr. Chairman and Dr. Mustard, the mandate of this
Commission has to inquire into health and safety issues surrounding
the use of asbestos in Ontario. It has been a broad mandate and

MR. STARKMAN: (cont'd.) over the past two years we have heard considerable evidence on a variety of subjects.

5 Our review of the evidence in preparation for today's final submission indicates to us that despite the breadth of the inquiry to date, the issues to be determined, or the issue which sets the tone of the final report, is really quite simple and straightforward.

10 That is, who is to bear the risk and the burden of diseases and deaths contracted from exposure to asbestos.

There is no doubt that asbestos is a dangerous substance and is dangerous to your health. The Asbestos Victims of Ontario maintained at the commencement of the hearings, and maintains today, that there is no demonstrably safe level of exposure to asbestos.

15 The first months, the first two parts of the Commission's hearings, dealt with evidence from many of the world's leading physicians who had conducted epidemiological studies on asbestos workers, and their conclusion, without exception, supports the proposition that there is no threshold level and no demonstrably safe level of exposure to asbestos.

20 All of the available evidence supports the linearity of the dose-response relationship at high levels of exposure, and acknowledges the paucity of the evidence with respect to exposure at low levels.

25 The medical witnesses further, however, acknowledged the consistency of assuming a linear dose-response relationship for exposure at low levels, and this was certainly the approach adopted in the Simpson Report.

30 That report preferred the linear model as its standard for three principal reasons. One is, it fits the data for occupational exposure. The second is, it's the simplest hypothesis and the one most readily used for extrapolation to

5 MR. STARKMAN: (cont'd.) the probable effects of low doses, and three, even if it's incorrect, it is the most likely to lead to overestimate rather than an underestimate of risks at very low levels.

In other words, it's a prudent and the most cautionary approach.

10 The Asbestos Victims of Ontario urge the Commission to adopt the linear model as a basis for its determination of health risks, and in addition to the reasons set out in the Simpson Report, we would just re-emphasize some of the difficulties that became apparent with the epidemiological data on which the risk is calculated.

15 These findings as reported in those studies are based on the study of workers who were employed in asbestos mining and manufacturing in the 1940's, 50's and 60's. The record of exposure for many of these people is certainly unperiodic (sic) and really, from a scientific point of view, quite unsatisfactory. There are a few readings taken, sometimes months and years went by without any readings being taken. The accuracy of the readings has never been verified.

20 There is great difficulty in converting the particle counts to fiber counts, and the cause of death which is shown on the death certificates is unverified and really unverifiable.

25 We know that there was little probability that particles of less than five microns, certainly the submicron particles, were not read.

It is not to criticize the reports in themselves. For despite variations between them, they are the best scientific approach on the best available evidence.

30 However, we think it's important to note that these studies may have significantly underestimated the level of exposure or the number of attributable deaths.

MR. STARKMAN: (cont'd.) Conversely, they may have overestimated the level of exposure, and also the number of attributable deaths.

Now, if these studies have overestimated the level of exposure because of problems with reading or because of the paucity of the readings, that would mean that the graphs which generate the risks would be shifted down to even a lower point than indicated as a result of the study, and what that means is, if you compare it to the assertion, industry's assertion, that there is a safe level...or to put it another way, that exposure at levels of less than two parts per CC...certainly at one part per CC...pose the most significant risk, these conclusions are for the most part based on the fact that risk is certainly increased at high levels of exposure.

However, if the exposure data is incorrect, if it was overestimated, then certainly there would be risks at even lower levels than the study would seem to indicate.

In short, on this point, the linearity of the dose-response relationship is the only logical assumption that can be made at this point in time. Perhaps in fifteen or twenty years if persons continue to work and be exposed to asbestos, in fifteen or twenty years we may know whether or not exposure at the levels that people are being exposed to today cause significant health problems. However, we don't know that today.

The Commission must consider that evidence and, in our submission, must be satisfied before making a determination as to the nature of the curve, that exposure at low levels poses no significant health risk.

I think I would ask it to you in this way: based on the evidence that you have heard, would you be satisfied in working in an asbestos mine or an asbestos factory, would you want your family or friends to work in that mine, based on the evidence

MR. STARKMAN: (cont'd.) that you have heard, based on the levels of exposure which presently exist? Are you satisfied that that poses no significant health risk?

Frankly, when I ask myself that question, there is considerable uncertainty in my mind. I, for one, would not want to go to work in a mine or manufacturing plant, or secondary manufacturing business, even if that place had levels of exposure which are within the government standards, if you like, or are within the standards that industry would suggest pose no significant health risk.

I certainly wouldn't want to do that, and I suggest that the only rational response to that gut feeling is to say, we are concerned about the risks at these low levels, and the only way to translate that into an accurate projection of the problem is to assume the linearity of the dose-response relationship.

Now, if you assume that linearity and recognize that not only is asbestos dangerous to your health, but that exposure at any level increases the risk, the possibilities of contracting some form of asbestos-related disease, then the question really becomes - who is to bear that risk and who is to bear the burden of getting such diseases as a result of such exposure.

I think that in an ideal world that...to ask that question would necessitate a total ban on the use of asbestos and asbestos products. That would also necessitate the total ban on the use of many other industrial products which are recognized as being dangerous.

But I think that is the place that the Commission must start, to recognize that they are dealing with a dangerous substance which ought to be totally banned because it is dangerous, and the only justification for not banning the product is because of a decision that it is necessary, that society demands

MR. STARKMAN: (cont'd.) it, that it is necessary to be used in the manufacture of certain products that society must have or for which there is no replacement.

I would emphasize that I don't think in this equation we are looking at necessarily the cost of a replacement.

In other words, asbestos pipe can be replaced and while the alternative may be slightly more expensive, it can nevertheless be replaced, and the cost of replacing it is a cost that must be borne by society at large.

I think in terms of the question of the continued use of asbestos we are only looking at products for which asbestos is necessary and for which there is no replacement.

In making this determination as to which products are necessary, I think it's important that the Commission acknowledge the nature of the economic system in which we are presently living. Industry, naturally, wants to continue to mine, manufacture and sell asbestos products.

These industrial manufacturers are engaged in this activity for the purposes of private profit. In other words, they want to sell these things not just for the general good, but because they are in business to make money, and asbestos makes money, and if there is any doubt about that I would ask you to look at the Johns-Manville annual reports for the last several years - that is, 1979, 1980 and 1981 - and I think when you look at those reports and break down out of the whole Johns-Manville Corporation, a break down of the various activities that the corporation is involved in, you can see that yes, asbestos is a declining slice of the entire pie.

In other words, they are selling less, mining less asbestos in proportion to the totality of their operation.

Nevertheless, despite the decline in the percentage that asbestos activity represents of the whole pie, that

MR. STARKMAN: (cont'd.) activity is extremely profitable. It is the most, as I read the reports, the most profitable sector of a large corporation such as Johns-Manville.

So if you compare it against fiber glass activities, against textiles, against forest products and whatever other activities, it appears to me - as I read the statements - that asbestos is the most profitable sector.

So it's only natural that a corporation which engages in activities for profit would want to continue to operate the most profitable sector of their enterprise.

I think it's also important to recognize that despite the concerns of individual people within any of these industries, labor is essentially a factor of production.

I don't say that because of any bad will towards any particular corporation or any particular individual, but that is the nature of the system we live in. Labor is a factor of production, and a corporation which is attempting to maximize its profits would like to pay labor as little as possible and to keep the costs associated with the use of that labor as low as possible. That is the reality of the system we live in.

Therefore, when you are looking at the question of what products made from asbestos are necessary for the people of the Province of Ontario, one should not look to what industry says about that, because industry has another interest at heart, and that is the profitability of their corporation.

When weighing that question of the necessity of the continued use of a particular product, the question of private profit is not a relevant consideration either. The only acceptable reason for making a social decision that there are some products for which there are no replacements and which are necessary for society is not based on profit. It is based on the determination that society must have these products in order

MR. STARKMAN: (cont'd.) to continue the type of lifestyle that the majority of the people want.

5 In these circumstances, the decision is essentially a social one, and in that sense the decision, the responsibility for that decision, I think, rests...recommending or making findings with respect to that decision...rests with the Commission, based on the evidence that you have heard and on what you all can take notice of or know about the nature of Ontario, the society, 10 the people and the economy we live in.

Well, insofar as the Commission will determine that there are such products that require the continued use of asbestos, the question then becomes - who should bear the burden of injuries and deaths that result from the handling and use of that product.

15 It is clear to us that this burden should not be borne by the people who work with that product, and I think the reason is that this is not an ideal economy, an ideal society that we live in. The people with the power are the governments and the corporations. They are the ones with the capital to do the research and development, they are the ones with the legal power 20 to control the work force and the nature of the work performed.

Because they have the power to make those decisions, to hire the type of expertise that's necessary to make those decisions, they are the ones who should bear the principal burden of responsibility for injuries which result from activities which 25 are deemed necessary to society and are nevertheless carried on for their private profit.

There are four areas that I would deal with on the question of burden. The first is the burden of adequate notice.

30 I think that this is, in a sense, a natural justice type of principal. Surely the manufacturers and users

5 MR. STARKMAN: (cont'd.) of asbestos have a duty to notify all employees, all persons who come in contact with asbestos, who work with asbestos, of the dangers that are associated with working with asbestos.

This would include verbal and written notification. This would include notices on packages. Particularly this would include notices on construction sites.

10 It's one thing to talk about workers involved in asbestos pipe manufacturing or mining - they know they are working with asbestos. It's another to talk about people who are on construction jobs for a week or two or three, and who see no indication from the employer that they are working with a dangerous product.

15 Clearly this information is within the knowledge of the employer, and may or may not be within the knowledge of the worker. This would at least give people the prima facie idea that if they were concerned, really concerned, they could refuse the work. This is the first sort of principle of the actual justice of proceeding in this fashion.

20 However, the responsibility cannot end there. It can't end there because we don't live in a society with respect to labor, and labor that is a free market system. We live in a society which has ten percent unemployment, up to thirty percent unemployment at the present time in the construction industry. People sometimes don't have a chance. It's not a free choice
25 as to whether they want to or don't want to continue to work, or to work for a particular employer. They must continue to work. This is the only way they can earn a living. They don't have the type of mobility or opportunities which are present to certain other members of society, or perhaps in other societies, which
30 will allow them to just walk away.

So I think the notice is important, and it's

MR. STARKMAN: (cont'd.) important because it dovetails with the Occupational Health and Safety Act.

5 If it is dangerous and they see that...and they know they are working with a dangerous substance...they can make use of the Act if it should become necessary.

The second area in terms of the burden is the adequate monitoring of workers in workplaces.

10 Now, this monitoring, unfortunately, cannot be left in the hands of the employers and the corporations. The reason that it can't be left there is not only because of their poor record in the past - which I think speaks for itself and is admitted and acknowledged in the evidence and statements that are before the Commission. It can't be left there because of the type of system we have.

15 The principal reasons for industry is to make profit, and therefore even where there is a concern...and I'm not trying to suggest that there is perhaps no concern, but when it becomes a question of profit versus monitoring, or health and the cost associated with it, profit is going to win out, and it's going to win out because that's the raison d'etre of the corporation, and because...if for no other reason, and even to put it in sort of a neutral type of term, they have an obligation to their shareholders and the obligation is to maximize their profits, and that is how the system works.

20
25 So it can't be left in the corporations hands, but on the other hand, unfortunately the internal responsibility system at its present state is not adequate to deal with the problem. It is a reasonably new idea, it's perhaps a growing idea, it is a very good idea, but the realities of the system are that little or no power actually rests with the various committees, with the workers if unorganized, to force compliance or change.

30

5 MR. STARKMAN: (cont'd.) So at the present time it's not really possible to suggest that the workers should be policing this themselves. They don't have the resources, the knowledge or...principally...the power to effect such changes even if they should come to their attention.

10 This leaves, I suppose, as the only other player in this scenario, the responsibility for monitoring, or for ensuring the monitoring of workers in work places, with the government.

15 This should be done, in our submission, by the setting of a standard for the use of asbestos products in essential aspects of society. The standard should be set at the lowest, lowest, lowest possible level, and I say that because if you assume the linearity of the dose-response relationship, then it becomes only a question of what standard can be met.

20 I think that if you examine the history of standard setting and the history of...in any sector of society... there are two ways that...I mean, there are two essential ways that you can set standards. You can set them by agreement with industry - which is how it works quite often. In other words, industry is already meeting the standard, so government sets the standard at the point that industry is already meeting, or government can lead the way and say, we must improve this standard and lower it.

25 I think that every time that has been done there has been incredible resistance to it, but industry has always met it.

30 In other words, it's not a case...and I don't hear people saying...we can't do it. What I hear being said is, at the very low levels it's the cost of doing it which is the consideration.

MR. STARKMAN: (cont'd.) In other words, cost versus human health. Not a question of inability, it is a question of cost.

I think that in this type of situation the government must take a lead in setting a standard at a level which motivates industry to do the research and development which is necessary to meet those standards, and every time a government has acted in that way, industry has been capable of meeting the standard.

I don't think there can be any compromises on this point. If it's deemed necessary to use asbestos products, then the standard must be as low as possible...must push the lower limits as much as possible.

In addition to the setting of standards there must be some requirement that asbestos workers have regular checkups, lung function tests, x-rays. The results of these tests must be made known to them personally, and/or to their physicians. There must be a positive obligation upon the employers to do that. There must be showers for these people and there must be double showers, to prevent the asbestos from leaving the work site.

On construction sites, the asbestos removal or installation, if it's absolutely essential, must be done within an enclosed area.

These things are just common sense, and yet they are not in place. We are dealing with a substance which is inherently dangerous, which is airborne, which can get outside of an enclosed area, and it must be handled within an enclosed area. There must be appropriate clothing, there must be masks provided for people.

These...even if these various things are mandated, there must be some enforcement provisions to the...to be sure that these things are actually being done, that the standards

MR. STARKMAN: (cont'd.) are being met and that the proper equipment and procedures are being followed.

Now, I think that one thing that is apparent from the evidence is that whatever standards or guidelines have been in existence, the enforcement of them has been somewhat lax.

This is a somewhat difficult area and I don't intend to lay the blame entirely on the government when I say the enforcement has been lax. They have political problems and other problems associated with the policing of these regulations, but certainly the violations of the regulations are found.

We think that there should be penalties provided against the corporations, certainly, but the penalties must extend against persons in the corporation.

In other words, there must be some personal responsibility because this is the only way in which...and particularly in a large corporation, in a large multinational corporation, which seem to dominate asbestos mining and manufacturing in this country, and particularly this province, the only way is to affix some sort of personal responsibility within a large corporation so that the costs of associated with, let's say a fine, aren't just borne by the corporation, rolled into their budget and passed along to the consumers.

When you have an oligopoly such as exists in the asbestos field, fines are really of little assistance.

Examine, for example, the statements of Johns-Manville and see the scope and the size of their operation and assets, and ask yourself if there are violations - even serious violations - what size of fine would you have to have to make an impact on these people?

In other words, think in big numbers. Twenty-five thousand, fifty thousand. It seems like a lot of money and it is a lot of money, but it's not a lot of money when you have assets

5 MR. STARKMAN: (cont'd.) in the hundreds of millions of dollar range. These are small numbers and our enforcement authorities have never been able to appreciate their fine of twenty-five thousand dollars to an individual who makes twenty-five thousand dollars a year is a substantial difference than a fine of twenty-five thousand dollars against someone who has a hundred million dollars a year.

10 These are different equations and they must be considered, because if the only way that the corporation understands enforcement is even a fine, that is the end result, a fine must be felt against the assets of the corporation.

In other words, there must be some positive incentive. If they only respond to economic stimulus, there must be some positive incentive.

15 Now, I think that's why we urge that there be some system of being able to enforce these regulations against individuals who are operating within a corporate structure.

20 With respect to construction, and on the issue of the monitoring and enforcement, we see very little justification for the continued use of asbestos board or asbestos tiles or asbestos pipe.

Insofar as the Commission would decide that these are essential and must be available for the people of Ontario, we think there should be some sort of permit system instituted with respect to construction projects.

25 In other words, the permit system would be issued, if you like, to the general contractor, who would have to make it known to the subtrades that there is a permit, they are working with asbestos, that there are regulations associated with this work which is going to cost money, and allow the subtrades, the subcontractors, to be sure that those costs are built-in to the tendering system.

30

5 MR. STARKMAN: (cont'd.) In construction the only way is through permit, because even if you have incredible numbers of inspectors there are so many construction jobs which are going on within the city and around the province, and so many people who will not and do not report the nature of the job that they're on, the only way to be sure that they are aware and that their work is being monitored is to have some sort of permit system.

10 The only way to monitor the work, the workers... the construction workers...is to have some sort of provincial legislation whereby the names and the levels of exposure of the various workers at that site are recorded, and we would hope that there could be a recommendation that a national registry system be set up, because there is considerable movement in
15 the construction trades particularly, interprovincially.

Now, we think it's important that the Commission recognize that whether or not the standards that are set are called guidelines or whether they are standards, these standards are treated by the employers...and also ultimately by the courts
20 if the matter ever gets there...as virtually a licence, and by that I mean if the standard is one and industry is meeting the standard, and the question is a question of negligence, that's almost a complete defence as it turns out.

They say, they set the standard of one and we are meeting the standard, and that is interpreted as being a defence.
25 Whereas instead of just being a standard, it turns into a licence to carry on at a certain level.

In other words, if you think the standard is going to get better, it's not, unless government forces it to, because it's treated as a licence and there is no incentive to do anything as long as the standard is being met.
30

That's why the standard should be set as low

MR. STARKMAN: (cont'd.) as is conceivably possible, and constantly being lowered.

Now, I've discussed the question of remedies against corporations and individuals. We think that there should be some sort of remedy against the government itself, and that would be for the nonenforcement of the standards.

In other words, when other regulations are set up if the government is going to be in charge of policing those, who is going to police the government to be sure that they are performing the job that they are supposed to perform?

Why is it that the government is not negligent? If they have a standard and they have regulations and they are supposed to be ensuring that people abide by these regulations and they are failing to do that in some manner or another, why does that not constitute negligence?

Well, in fact it really doesn't and the point is that it needs some sort of remedial legislation to make that clear, and we would ask that the Commission consider the issue of who...and it's always put, who is going to police the police... well, who is going to police the government on this to be sure that they are enforcing the standards that are being set?

The fourth issue on who should bear the burden is ultimately a question of compensation. It comes last because it's the last of the four. In other words, you would hope that with limited use of asbestos at very low standards, with adequate notice, adequate monitoring and adequate enforcement, that there will be no health risks, no consequential health risks and no consequential deaths.

But if you assume the linearity of the dose-response relationship even...and we won't know for another fifteen or twenty years...with continued production at present levels of exposure whether there is a significant health risk, there are

MR. STARKMAN: (cont'd.) going to be injuries and deaths as a result of that exposure.

5 Now, the Asbestos Victims of Ontario basically support the principle of workmen's compensation. That is, someone who is injured as a result of work should be compensated without the necessity of proving liability, without the necessity of incurring the costs and other exigencies necessitated with legal action.

10 Our primary concern with the the workmen's compensation system as it presently exists are set out in our submission, and I don't propose to repeat them. I would just emphasize that our concerns are this: We feel that there must be an irrebutable presumption put in the Act that a person who has signs of asbestos disease...an irrebutable presumption that
15 they have contracted this disease through exposure in the work place, regardless of the length of the exposure.

We feel that no claim should be denied because of the finding of a pre-existing condition. That is, whether or not there was in fact a pre-existing condition.

20 In other words, at the present time the WCB denies claims because of a policy which says that there is a pre-existing condition, a deemed pre-existing condition. That is totally improper.

25 But even when there is in fact a pre-existing condition, that should not disallow or diminish a claim for compensation benefits.

We think that the burden, the question of the burden of proof, should be written into the Act, clearly written into the Act.

30 I would urge the Commission to examine the example of what that burden of proof section might look like, to examine section 85 of the Pensions Act, which is the Act in the federal

MR. STARKMAN: (cont'd.) jurisdiction which deals with pensions for war veterans whether their injuries were sustained in the theater of war or in the military service in time of peace.

That section has essentially three components, and it says that the Commission, in determining the question of compensation for these people, should accept as proof any uncontroverted fact which is put forward by the applicant; (2), they shall draw every inference from the facts in favor of the applicant, and (3) they shall resolve any doubt in the applicant's favor.

That legislation is already in existence. It certainly is a far sight better than the type of situation we are faced with at the Board here in Ontario, which is that the benefit of the doubt shall be given to the applicant.

We think that the Board should resolve any and all doubts in the applicant's favor.

With respect to the question of widows or spouses of deceased asbestos workers, we think that these people should be compensated regardless of the level of disability that their spouse had, and that they should be compensated unless the contrary is proven.

In other words, unlike the system we have now where if the worker is less than a hundred percent disabled and dies there is no compensation and a vague letter goes out to these people, and perhaps they contest it and then an inquiry ensues as to whether they ought to get compensation.

We think that these people should be compensated automatically, unless it can be proven that the death of their spouse was not caused, was not related to their occupational exposure.

We think that the employer should have no standing at the Workmen's Compensation Board, except insofar as they might

MR. STARKMAN: (cont'd.) wish to argue amongst themselves as to which one should have responsibility for being credited with having caused the occupational disease.

This makes sense, because if the procedures of the Board are tightened, and if compensation comes more in line with the principles which underlie the granting of that compensation, we have no doubt that the reaction of employers will be to begin to challenge claims on the merits.

But it's our feeling that this question of workers' health and compensation for workers should not be allowed to be turned into the type of politics which would be associated with those challenges.

In other words, you have companies with very large resources, very sophisticated resources, who could mount interminable challenges to these claims and if you think about it carefully, they have no standing and they have no right to make those sorts of challenges.

This was part of the tradeoff system of Workmen's Compensation. Workers gave up the right to sue in exchange for speedy recovery without proof of liability, and the employer, I think you must remember, gains from this as well, and particularly the oligopolist, because what it means is they have a universal insurance policy at a reasonably cheap premium, and they know it in advance and can build it in to their costing procedures.

Rather than being faced with unpredictability of court actions arising from time to time with unspecified or unknown and unknowable amounts of damages, they have one policy which they know the cost and which they can pay in advance and which is administered by a government agency and it's taken out of their hands, and they don't even have to be associated with the bad publicity and bad...which can be associated with having

MR. STARKMAN: (cont'd.) to defend these actions.

5 A good example is what is going on in the United States right now, which is - a company like Johns-Manville is faced with thousands of lawsuits and from their perspective at least, having to defend these suits is expensive, and to a certain extent, you would think, would be embarrassing.

10 Somebody is making a claim that they have been injured and the company is fighting them tooth and nail, is fighting every one. That's their policy - we'll fight every one.

In other words, the matter is no longer a question of whether the person has been injured or not been injured. It's a question now of corporate policy, economics, politics.

15 Well, all of these questions have been taken out of their hands. The employer does gain through a workmen's compensation system.

The difficulties, however, with the Workmen's Compensation Board stem from the fact that because it is an insurance scheme, because it is reasonably inexpensive, there is no incentive upon the employers to change their work practices.

20 In that respect we would urge that employees be allowed to have a cause of action against the employers, against their employer and against the supplier and other persons associated with the use and manufacture and use of a dangerous product.

25 Perhaps the test might be made more stringent than the negligence test, something approaching recklessness. But nevertheless, the right of action must be there and it must be there because the Board has never taken the initiative in applying...in exercising its mandate to punish companies that have abhorrent safety records.

30 It's clear they have the authority to do that, to raise their premiums to the level which would induce them to

MR. STARKMAN: (cont'd.) improve their practices, but they don't.

5 The purposes of these actions, of allowing these actions, is not to provide for extraordinary compensation for any particular individual. The purpose of allowing them is to (1) allow a public hearing on the types of practices that a particular employer is engaged in, (2) to allow, to provide a disincentive to an employer from continuing those practices, and
10 I think it's important to note if you just glance at what the American decisions in these actions have been like, when they are successful a part of the damages may be special or general damages, but a part of those damage awards is often, or can be, a punitive damage award.

15 And a punitive damage award is (1) a finding, if you like, based on a finding of recklessness. But also I think it's important to remember that punitive damages are not covered by insurance policies, so anyone who has a policy of insurance in a normal manufacturer...or if a manufacturer has a policy of insurance, it may cover them against damages, but does not cover
20 punitive damages, and this provides, if you like, a type of incentive which is necessary to be certain that employers are complying with the regulations and are making every possible effort to ensure that workers are not injured as a result of their exposure.

25 Mr. Chairman, members of the Commission, we think that the crucial issue with respect to compensation, and again with respect to people who have already been injured, is something that in a sense is difficult to deal with even if the Board policies are improved as we suggested, or as Professor Weiler suggested, as Professor Barth commented on, as it set out in
30 the White Paper, because so much of it does come from a question of approach and policy development at the Board level.

MR. STARKMAN: (cont'd.) We heard from many Board witnesses, and I think we got to see and hear from many of the principal players of the Board who are involved in this compensation question, and I don't comment on the veracity of their evidence, but I would ask you to recall the quality of their evidence...that is, the quality of the people that the Board has working in these various positions, the quality of the people who are making the policies and the decisions.

That, to a large extent, is the crux of the problem with respect to workers making claims. It is not...is no matter what procedure you have in this area, you have quality...the quality of the people becomes very important, and the only way that we would propose to deal with this question of the quality, besides actual changes to the Act as have already been set out, we think that with respect to asbestos...and perhaps with respect to other products...when you deal with this burden question, the question of entitlement, we would ask that somehow it should be done as if it was the converse of the criminal burden of proof.

In other words, everyone knows that when you go to a criminal trial the question is, is the person guilty beyond a reasonable doubt. No one knows really what that means, but everyone has an idea in their head as to the type, the level of proof that's necessary to convict somebody.

You know, the reason it's set that way is that undoubtedly guilty people will walk out of criminal courts, but that is a policy decision that we've made in this society, and the decision clearly is a hundred guilty people should go lest one innocent person be convicted. We want to err...we want to make every effort to ensure that no errors are made to convict innocent people, and we are willing to let guilty people go. That's the policy decision, and that's the same decision that, with respect, should apply to determinations at the Workmen's Compensation

MR. STARKMAN: (contd.) Board. It should be just the other way.

5 In other words, the question should be whether or not there is any reasonable chance...whether or not it's reasonable... that this person's injury is associated with their exposure.

10 When you put it in terms of any doubt, the reasonableness of the assumption, it's just the converse of the criminal burden - guilty beyond a reasonable doubt. Is there any reasonable doubt that this person's injury may have been caused through their exposure to asbestos.

So if people have an understanding of what the criminal burden is all about, the burden should work just the other way with respect to asbestos cases.

15 And that's fair. That's very fair, because the decision to continue to allow the use of asbestos is done in a social interest, and society's interest as a whole, and industry, if they continue to participate in the manufacture and use of those products, benefit from it in the sense that they continue to make profits, but the burden, the downsides, are clearly borne by the people who work making those profits, work to make those profits.

20 Therefore, society, I think, has an obligation to bend over to make sure that we don't let one person's injury go undetected and uncompensated. Clearly that should be the policy of the government.

25 Well, Mr. Chairman, it's been more than two years since this Commission was established, we've heard a lot of evidence and we have had some excellent study papers. We would commend the Commission counsel, Commission staff, for the job that has been done. We feel that most of the evidence, relevant evidence is before the Commission, and in this time since the establishment of the Commission, nothing has really changed with

30

MR. STARKMAN: (cont'd.) respect to the victims of asbestos.

5 I think that everyone realizes that the Commission was established in response to a, if you like, political problem or a political question which arose, and to some extent the time that's been spent has defused the urgency of that problem, but I would like to remind you that in these two and a half years since the establishing of the Commission, many of the people who were injured as a result of exposure to asbestos who I was
10 involved with have died. Some of their spouses have not received compensation, still others have become injured and have been added to the list.

15 We would urge you to act expeditiously, to write a report that would provide some justice and some relief for these persons.

Those are my submissions. Thank you.

DR. DUPRE: Thank you very much, Mr. Starkman.

20 Can I just ask you one question for clarification? Under the heading of enforcement you raised the problem, the classic problem, if government polices the pen, who polices the government.

As I tried to follow you into your next step, it was to the effect, if I remember correctly, that we need remedial legislation to make this clear.

25 Now, was the thought you had in mind about remedial legislation linked to the labor point that you raised about giving employees a limited cause of action against reckless employers?

30 MR. STARKMAN: Yes, and the way I would see it would be that the government should be added as a codefendant in those actions, but that would involve substantial amendments. I'm sure Commission counsel could advise as to the type of wording that would be necessary to allow that to go ahead.

DR. DUPRE: Dr. Mustard, do you have any questions?

5 DR. MUSTARD: I have two quick questions. First, do you advocate that asbestos be banned except for essential purposes, would you apply that rule to all hazardous substances, or all hazardous substances which are carcinogens?

Can I get some feel for your views on that?

10 MR. STARKMAN: Well, Dr. Mustard, I think in a sense the Commission is in a difficult position. The mandate deals with asbestos, although insofar as generically asbestos is a dangerous substance and also a carcinogen, of course, it spills out into these other categories.

I would say that definitely carcinogenic substances should be banned, shouldn't be used except insofar as they are essential products.

15 By that I mean it's almost a backwards type of approach, because if it was realized that they were essential products...I mean, if it was realized that they were carcinogens and they were never introduced in the first place, the chances are that they might not be necessary in terms of any production process.

20 But I think that is the only rational way to proceed, and I would emphasize that I say that in respect of the work place, because the obvious question is what about cigarettes, because it is a carcinogenic substance which maybe should be banned.

25 The problem is that with respect to cigarettes, there is at least the element of free choice. I mean, there is the addictive nature of them, certainly, but there is the element of free choice - whether one wishes to smoke or not.

30 With respect to employment, given the realities of the economic system, the free choice is not there to be exercised in the same fashion.

5 DR. MUSTARD: The second question is in the compensation area. You did raise the conflict problem of burden of proof issues and it involves many considerations.

What do you think would be the best overall way to handle this complex problem -staying with the existing system as modified by some of the suggestions you have made, or adopting an even more radical approach to handling the whole compensation question for illness?

10 MR. STARKMAN: I'm not sure what you mean by more radical approach.

DR. MUSTARD: Mr. Weiler, in his documents, has outlined one approach.

15 MR. STARKMAN: Well, generally we support most of the recommendations that were outlined by Professor Weiler, in terms of the medical review committees, the restructure of the Board, the availability of the information.

20 I'm concerned that...I don't think that this government would be disposed to make any radical changes other than the ones that they have already set forward, but I do think that if the burden of proof question should be clarified...and that can be clarified in a number of fashions. You can clarify it by writing it right into the Act. It can be clarified by making asbestosis a scheduled disease and writing in certain presumptions with respect to it, and I think that realistically that is all that can be accomplished at the present time.

25 DR. DUPRE: Dr. Uffen?

DR. UFFEN: When you were commenting on monitoring you made a very strong point a couple of times about lowest possible.

MR. STARKMAN: Yes.

30 DR. UFFEN: Could you elaborate a little bit? Do you mean lowest achievable, detectible, measurable, ambient or any other?

MR. STARKMAN: Well, I would think that if you put in those terms I mean the lowest detectible.

5 DR. UFFEN: Reliably detectible? We have had evidence in front of us there has been detectible and detected, but no agreement among equally reliable detectors.

MR. STARKMAN: Well, I think if that was the problem I would say reliably detectible.

10 In other words, that the best equipment possible should be used by the most competent operators, and if they detect the level of fibers that they can detect, that should be the level to which we are striving toward, in that there obviously has to be some bounds in terms of what is detectible, and perhaps what is achievable, only with respect to the essential substances.

15 But what I'm urging is that the Commission should recommend and the government ultimately should be leading in this matter, and not following.

20 In other words, there is no incentive to reduce to those detectible, reliable detectible levels, if the industry is meeting a standard above that and upon which they say...it's treated as a licence to continue at that level.

DR. DUPRE: Maybe if you will permit me one parting question, Mr. Starkman, you advocate a registry of construction workers.

MR. STARKMAN: Yes.

25 DR. DUPRE: This is in a setting where, can I take it, that you see construction sites regulated by procedure?

MR. STARKMAN: You mean through a permit system or otherwise?

30 DR. DUPRE: Through that kind of system or otherwise, but regulated by procedure as distinct from the manner in which you have a standard model of fixed-place enforcement?

MR. STARKMAN: Yes.

DR. DUPRE: Measurements and monitoring, that sort of thing?

5 MR. STARKMAN: Yes, I would think the procedural method is preferable, but that's only in the context, of course, of the necessity of having to continue to use these products in construction.

DR. DUPRE: Right.

10 Now, is the purpose, then, of your registry of construction workers to have a record for compensation purposes, or is it linked more specifically, in one way or another, to the regulation by that procedure?

15 MR. STARKMAN: Well, I think primarily it's linked to compensation and diagnosis, because I think that what is clear is we are living in an asbestos world at the Commission, but I think the realities are that unless a doctor, for example, is looking for asbestos or is aware of the asbestos problem, he would probably not make a diagnosis, it being in the whole picture a rare disease...except among asbestos workers or construction workers insofar as they move around the province and around the country. Diagnosis would be assisted by having such a register, setting out the exposure levels.

20 In addition, the requirement to register these people being a positive requirement and given the fluctuations that exist on any construction site, would keep the employers', the contractor's mind, closely attuned to the question of asbestos, because even if it's a short job of a week or two weeks duration, any number of trades could pass through that construction job and the requirement that these people be registered would keep it on the contractor's mind as to the asbestos question or the asbestos problem.

25 DR. DUPRE: I don't want to worry this any more, but I just want to pick up a set of words you had in the middle

DR. DUPRE: (cont'd.) to make sure we understand each other.

5 I absolutely see your rationale in terms of having the registry for purposes of compensation and diagnosis, but you injected the words 'setting out the exposure levels', and you see as I would understand it, most of your construction and demolition sites, etc., at least those who say that the only way to go is through regulation by procedure, normally say this precisely because you cannot measure and monitor exposure the way you can in fixed place.

10 MR. STARKMAN: Yes. Perhaps I could just rephrase it...exposure levels such as they are, such as they are knowable. Perhaps we could just leave it at that.

15 DR. DUPRE: Or simply in connection with what kinds of procedures the individual was working with.

MR. STARKMAN: Yes.

DR. DUPRE: Thank you, Mr. Starkman.

Do I take it, counsel, that Mr. Ublansky has agreed to come next?

20 MR. LASKIN: I have left it reasonably flexible, and I'm not...

MR. UBLANSKY: I'll only be a couple of minutes.

25 Mr. Chairman and members of the Commission, again I appreciate the opportunity to speak to you. I have done it a number of times and I hope I have made some contribution to your efforts.

30 I have not been as close to the day-to-day activities as others, and I think that I'm not going to attempt to summarize evidence or anything of that nature. That will be done and has been, to some extent, very capably by David, and will be subsequently by Linda and Nick.

We have presented two briefs and I have appeared

5 MR. UBLANSKY: (cont'd.) before you a couple of times and I don't really particularly want to repeat all the things that I have said, but in looking over the briefs and remarks that I have made, I thought there were two things that I wanted to say and are probably worth saying again.

10 One of them, I guess, is picking up where David left off, and that is with respect to the Johns-Manville, Scarborough situation. I think that probably what I felt initially intuitively has, in the two-and-a-half year period since the Commission has been in operation, unfortunately been documented.

15 The studies that were done by Dr. Finkelstein have in effect confirmed that the Johns-Manville plant in Scarborough was a disaster area during the period in which they manufactured asbestos products.

20 That fact is reflected in the Workmen's Compensation Board statistics, which were included in the Compensation Board's brief, which showed at least at that time, which I believe was February of 1981, that a hundred and twenty-four of the two hundred and fifty-eight asbestos-related disability claims, and fifty-three of one hundred and eight death claims had emanated from that one plant.

As I understand it, those figures don't include the lung cancer claims.

25 Now, our union has stated on several occasions, both publicly and privately to the Commission, that the victims of this asbestos epidemic and their survivors have not been, and are not being at the present time, fairly treated by the compensation board in Ontario.

30 David got into more detail on that. I'll just let that statement go as it is, but it's certainly true that many have received no compensation at all because of their inability to

MR. UBLANSKY: (cont'd.) satisfy the Board's rigid guidelines. Others have received small pensions which can't even begin to compensate them for the loss of income they have suffered as a result of their health problems.

No one has been, or probably ever will be, compensated for the loss of amenities of life or for the pain and suffering that are attributable to their poor state of health, and certainly we have had many graphic descriptions of the extent and the depth of this suffering as described in writing in our first brief and certainly it has been presented directly to the Commission by the victims themselves on a number of occasions.

Now, our union has taken an active role in these proceedings in the hope that the Commission at some stage in their deliberations would take some form of action to intercede on behalf of the victims to correct what we perceive to be injustices.

Needless to say, and being honest, I would have to say we are extremely disappointed that such assistance, if indeed it is forthcoming, apparently will not materialize until some point now after the release of the final report of the Commission. We had hoped for some interim relief.

These workers and their families deserve more consideration than they have received in the past. We have no hesitation in saying that this is a special case in light of the numbers of people who have been affected, and it merits the same kind of special treatment that we extend to victims of other disasters.

Now, although it was alluded to before, I suppose your mandate is somewhat narrow and limited to asbestos, but certainly in a number of areas and questions that you have raised either directly or through the various study papers that were commissioned, there are some broad, general issues that have been raised by these proceedings, and the second thing that I thought

MR. UBLANSKY: (cont'd.) was worth repeating was that certainly we as a union and I as an individual hope that the Commission will indeed address these issues of a more general nature which are raised by this tragedy.

I think that the history of the introduction of asbestos into the work place and the environment is a blueprint for failure...failure by industry, failure by government, failure by the medical and scientific community, and perhaps even to some extent by the labor movement itself.

The system failed to protect both workers and the public from the dangers which are associated with asbestos, and I think if the Commission restricts itself to addressing the issue of how we deal with the legacy of failure with respect to asbestos alone, I think the Commission too will have failed...failed, really, to make a significant contribution towards the struggle to prevent a repetition of similar tragedies.

I think there is a growing opposition to the motion that industry in this province, and elsewhere, has the right to expose workers and the public to untold and unknown hazards contained in the products that it produces. The freedom to pursue profit is not immoral, but freedom to profit from the misery of others surely is.

As the asbestos tragedy clearly reveals, the public simply cannot afford to rely upon industry to regulate itself, and it is by no means clear that it can rely upon government to regulate industry. That's what we have been talking about earlier.

The stakes are simply too high as we head into a new era of microtechnology and biotechnology. Both industry and government begin with the assumption that there is a right to expose people and the environment to potential hazards unless and until such time as a clear and present danger is identified.

The acceptability of that assumption is being

MR. UBLANSKY: (cont'd.) subjected to close scrutiny by a number of groups in our society today, albeit perhaps in a rather disparate and disjointed way at the moment, but I think there is room for this Commission to make a contribution towards forging a new, broadly-based consensus on how we...and when I say 'we' I refer to we as the illusive context...how do we protect ourselves from the hazards of exposure to chemicals.

I think, in my view, that this will require a reconsideration of these present assumptions, and indeed the development of new assumptions and new guidelines in these areas.

Someone I think...or I hope, and I hope it will be this Commission...but I know that someone has to pull all this together. There's just too many groups operating independently and individually - all with the same objective - but somehow unable to form what I would call this broad, new consensus. I think it's out there, it just has to be pulled together.

In conclusion, I just want to express my agreement with the Raybestos worker who told the interviewer for the Commission study, the one done on worker attitudes, quote:

"The Commission must remember that health comes first in all the decisions that they make."

End quote.

I think that if you follow that advice I think you will have fulfilled your mandate in a meaningful way.

Thank you.

DR. DUPRE: Thank you very much. I have no questions.

Dr. Mustard? Dr. Uffen?

(no audible response.)

Miss Jolley? Do you wish to come forward, Mr. McCombie?

MR. MCCOMBIE: I think it's me, yes.

DR. DUPRE: Okay.

5 MR. McCOMBIE: Mr. Chairman, members of the Commission, in making my final submission I would like to focus on three broad areas - regulation and enforcement, workers compensation and conclusions.

10 It would, of course, be nice to be able to give an in-depth critique of all the issues that have been raised during the course of this Commission. However, Injured Workers Consultants does not possess the massive resources of the asbestos industry, the Ministry of Labour's Occupational Health and Safety Branch, or the Workmen's Compensation Board.

15 I'm sure even the combined resources of Injured Workers Consultants, organized labour and victims groups amounts to a tiny fraction of what is available to what I will call, quote, 'the other side'.

20 Without belabouring the point, we would note that four hundred thousand dollars provided by the federal government to the asbestos industry's Canadian Asbestos Information Center, the 1982 budget of four hundred and sixty thousand dollars provided to the Asbestos Information Association of North America - this being in addition to the subsidization of the AIA salaries by the member companies - and the public relations work carried on by the individual members, and the twenty-one point... almost twenty-one point five million provided by the Workmen's Compensation Board to the nine employer-run Accident Prevent
25 Associations, to name but a few sources of corporate and government money flowing to the asbestos industry to do research and public relations.

30 I might note here that it is one of our submissions to Professor Weiler on his second phase study, which the report has not yet come out, but it is one of our submissions that in particular the last mentioned, the money flowing from the WCB

MR. McCOMBIE: (cont'd.) to the employer-run Accident Prevention Associations, should be equally be put in to... be given to labour for workers' Occupational Accident Prevention Association.

The bottom line, then, is that neither I nor, I'm sure, Miss Jolley, Mr. Starkman, Mr. Ublansky, can boast of research staffs and study grants available to those whose financial interest is to minimize the hazards associated with asbestos.

Well, not wanting to speak for them, and we've already heard from two of them, I'm sure it's generally true that our research and study comes from talking to workers and, unfortunately, their survivors about the personal effects of asbestos disease.

You've heard this evidence yourselves in the public submissions from workers and their survivors. All I can really add to that is to try to tie these stories together, examine why they arose in the first place and possibly suggest ways to prevent them from happening ever again.

Before beginning I would like to briefly explain my remark about government and industry being seen as 'the other side'.

In testimony to the Commission, Ministry of Labour representatives admitted that there was a conception among workers that ministry visits were prearranged with management.

Without getting into the validity of such perceptions, it is clear that it is subjectively the case that many, many workers see government as aligned with management.

This perception was also evident in the testimony of Eugene Girdouskas of the Hearne Generating Station, and I would just like to add parenthetically that during his testimony Mr. Girdouskas was asked by Dr. Uffen if there was a fear among workers,

5 MR. McCOMBIE: (cont'd.) when Mr. Girdouskas was talking about fear of fighting or struggling for safer conditions, Dr. Uffen asked if there was a fear among workers at Hearne that the plant might close. Mr. Girdouskas said indeed there was.

Since the time that he appeared, Ontario Hydro has announced the shutting down of another unit at the Hearne Generating Station, and the intended demise of the entire station by 1985.

10 I'm certainly not suggesting that union pressure over the asbestos issue is necessarily responsible for this, but nevertheless the perception remains.

15 Even accepting the government at best takes a neutral role in health and safety matters, we are then left with the worker/management relationship. For many of us this boils down to a basic power relationship.

20 Robert Sass, in his testimony to the Commission, talked about this fundamental power relationship existing in the work place, and the fact that capital's power predominates over that of labour. This relationship was also pointed to by the recent New Year's statement by the Committee of the Canadian Conference of Catholic Bishops which also held that, quote:

"This orientation directly contradicts the ethical principle that labour, not capital, must be given priority in the development of an economy based on justice".

25 Now, this rather lengthy preamble is intended to bring to the attention of the Commission the fact that medical, scientific, public policy and technical expertise are readily available in an inquiry into asbestos. It's a cliché to talk about the mountains of paper generated by Royal Commissions, and it is no doubt useful information to have.

30 However, the experience of thousands of workers

MR. McCOMBIE: (cont'd.) and their families is not bound by academic discussions of electron microscopy and carcinogenesis. It boils down instead to much less clinical facts of disease, deception and death experienced on a personal basis.

I can certainly appreciate the need for detached, scientific study, but we mustn't lose sight of what should motivate that study. The motivation for workers is fundamental justice, dignity and human life.

There is a recent...I believe it was the ABC television network in the States...did a program on asbestos, and it showed the progression of mesothelioma in the thirteen year old son of an auto mechanic.

The story was that the father had the son helping him in doing brake jobs and whatnot, and to watch the transformation of that boy from a healthy Little Leaguer to a frightening resemblance of what I can only describe as what to me looked like a Nazi concentration camp victim, one might accuse the producers of playing on the emotions of their viewers.

It would be impossible, though, to convince his parents of that.

To listen to Odette Dodds give the eloquent story of her struggle to not only recover from her husband's death, but relentlessly pursue justice for herself in the memory of her husband and thousands of other victims, is to cast the clinical testimony of professional witnesses into almost irrelevance.

While my primary concern in attending this Commission has been to address the issues of workers' compensation, I would just like to spend a few minutes on the role of governments - the government regulation of asbestos and the enforcement of such regulations, and David and Dan have touched on this, but I would like to add my two cents.

5 MR. MCCOMBIE: (cont'd.) It is very easy to get caught up in the numbers game when we are dealing with regulations - five-fiber limits, two-fiber limits, point five fiber limits, etc., etc. All sides have had, or currently have, their proponents.

The bottom line, however, is human life. To err one way would no doubt cost a considerable amount of money. To err the other would cost human lives.

10 Notwithstanding sophisticated economic, scientific and medical arguments, one can't evade the basic dichotomy - which is money versus human life.

Injured Workers Consultants opts for human life. All the months of hearings and reams of literature haven't convinced me that there is a scientifically accurate measurement of a, quote, 15 no-effect level of asbestos exposure. Nor have I been at all convinced that should such a level exist it would be strictly adhered to.

20 In a brief submitted by the Ontario Federation of Labour and the Toronto Occupational Health Resource Committee and others, the recommendation is made that the use of asbestos be banned in Ontario.

Mr. Starkman has discussed this earlier this morning.

25 This can be done along the lines that seem to be... the whole process seems to have taken up until now, which is the gradual reduction over many, many years of the exposure levels until we ultimately reach a point where it's either technically impossible to achieve or it's effectively banned.

30 As we have heard and as we have read in much of the evidence, the level of exposure, the allowable level, has gradually dropped over decades. We can continue slowly with that process, or we can opt for an immediate ban, and I would certainly urge the latter.

MR. McCOMBIE: (cont'd.) As mentioned, it is questionable at best whether a safe limit could be arrived at. What is more questionable is if it would be adequately enforced.

I would like, by way of an illustration, to cite a case example with which I am currently involved.

Sueng Chull Lee worked at Atlantic Packaging Limited, which is a corrugated cardboard manufacturer in Scarborough. His job involved working on a large machine known as a rewinder, which wound the rolls of cardboard and paper material.

On October 4, 1982, Mr. Lee, aged forty-three, died of mesothelioma. Mr. Lee's rewinder was equipped with an open brake drum to maintain pressure on the material coming onto the drum. This brake drum had eight asbestos-lined brake shoes.

Atlantic had never been monitored by the ministry for asbestos. On November 15, more than six months after Mr. Lee became ill and a month and a half after his death, the ministry inspected the machine.

By then, the brake drum had been enclosed on the advice of an independent industrial hygienist who had visited the plant at the end of June, at which time the brake drum was still unenclosed.

The ministry report, however, stated in part, quote: "Since the brake drum was enclosed, occupational exposure of operator to asbestos material is unlikely". End quote.

It is nowhere mentioned in this report that the brake drum was enclosed well after Mr. Lee became ill.

In this case, the fortuitous intervention of a concerned doctor and industrial hygienist ensures that such a shoddy ministry investigation will not be the last word. Had such an intervention not taken place, Mr. Lee's death would have gone all but unnoticed by everyone but his widow and four small

MR. McCOMBIE: (cont'd.) children.

5 The, I hope, obvious point of this example...one of thousands...is that workers cannot trust the ministry to defend their interests, even if the most stringent regulations were to be in effect.

10 It also illustrates that it is not only the Johns-Manvilles, the Bendixes or Raybestos-Manhattans of Ontario, companies one would expect to have ministry attention paid to, that the asbestos hazards exist in.

The ministry's role in enforcing regulation has been questioned. Certainly it has been questioned by workers and their organizations. It has also been questioned by the courts.

15 A recent Ontario Court of Appeal decision which upheld a twelve thousand dollar fine against a company found guilty of unguarded machinery, in that Court of Appeal decision the original decision by Judge Dneiper was cited, and it says in part, quote:

20 "I don't know if I might say this. I don't know how the ministry itself permitted the operation of these machines". End quote.

Judge Dneiper's fine was also four to six times that proposed by the Crown - that is, the representative of the Ministry of Labour.

25 During the fall session of the Ontario legislature there were almost daily questions concerning the effectiveness of the ministry in policing the Act and Regulations.

30 To ban the use of asbestos in conjunction with a change in outlook by the ministry resulting in active intervention in the interests of the occupational health and safety of workers would, in our view, be a major step forward.

Perhaps Mr. Laskin can correct me, but I know of no

5 MR. McCOMBIE: (cont'd.) other area of law in which violaters are so politely asked to stop breaking the law, by the responsible enforcing agency, and even repeated violations are met with complacency in many cases.

10 Now, to turn to the question of compensation, we have already submitted a brief to the Commission, and a critique of Professor Barth's study. I would now only like to briefly summarize our views on what we've heard and on workers' compensation.

As Mr. Starkman indicated earlier, workers' compensation in Ontario was enacted in return for a major concession from workers, which is to give up their right to sue.

15 I needn't summarize the enormous amounts of money involved in asbestos lawsuits in the U.S. I would only point out that American compensation law is no different from that in Ontario with regard to a worker having a right to sue.

20 Technically, workers in the U.S. are also barred from suing. It is my view that the difference lies in the response of those charged with adequately compensated victims of occupational disability. Unless the Ontario system considerably liberalizes its compensation system, you will see the flood of lawsuits we now see in the United States. In fact, we are beginning to see the tip of that iceberg in cases such as that of Terry Ryan versus Westinghouse, which has been fairly highly publicized of late.

25 In other words, the system is starting to break down, and will break down, unless adequate and meaningful compensation is available for all workers. The alternative is the court system, and without wanting to get into that I agree with Mr. Starkman's submissions on maintaining the current workers' compensation system with the right, in certain
30 circumstances, to bring suit.

5 MR. MCCOMBIE: (cont'd.) The government and the WCB can therefore continue to place an intolerable burden of proof on workers, and provide totally inadequate benefits when that burden is met, particularly for survivors, and stand to see the whole workers' compensation disappear in a deluge of court cases.

On the other hand, they can take the position that real benefit of doubt should be extended to workers, and provide presumptive clauses to the Act which will protect workers.

10 Unfortunately, I haven't been able to find out the fate of the American asbestos bill and what its status is now, but I would bring it to the attention of the Commission and notwithstanding many aspects of the bill itself, other aspects of it, I would like to cite briefly some of the clauses, presumption clauses, in that bill.

15 "One: Mesothelioma of pleural or peritoneum shall be irrebuttably presumed to have arisen from exposure to asbestos, and to have arisen out of and in the course of employment in which the employee was exposed to asbestos if the claimant demonstrates that the employee was
20 exposed to asbestos in the course of employment."

It then goes on, I won't read the whole thing through, but it goes on to make the same irrebuttable presumption about asbestosis, and makes a presumption about cancer of the lung and so forth and so on.

25 Now, certainly as Mr. Starkman submitted this morning, it's imperative to have that kind of strong presumption clause within the legislation.

30 Having developed those presumption clauses, however, one has to make sure they are used. There are currently in our Act in Ontario, and Acts across the country, presumption clauses. From our experience, they are often ignored by the WCB.

MR. McCOMBIE: (cont'd.) I would like to bring to the attention of the Commission a recent Court of Appeal decision, Evans versus the Workmen's Compensation Board, in which the court ordered the WCB to heed the presumptions of the Act. In Evans the Board found, quote:

"The Commissioners were clearly in error in interpreting it"...that is, the presumption clause... "as they did. Their approach destroyed the presumption intended to operate in favor of the worker". End quote.

The B.C. Board, in that case, had in fact ignored a presumption clause dealing with a silicosis case.

There is also currently a case that I am involved in here in Ontario, which is not as directly applicable, but nevertheless revolves around the Board using the presumption clause and following the Statute. That is, it revolves around section 3.2 of the Ontario Act, which is a presumption that if a disablement arises out of the course of employment it shall be presumed that it occurred during employment, and vice versa.

In areas in which such presumptions cannot be made, there may well be a need for administrative guidelines. But as Professor Barth pointed out, such guidelines should not be set up by a selected group behind closed doors.

The argument by WCB witnesses that an open process of guideline setting would be, quote, "too political", carries little weight with those whose fate is predetermined by anonymous people whose qualifications and justifications are unknown.

Many will contend that such an open system of guideline setting, as was advocated by ourself and others, in which everyone could participate, or at least know the rules of the game, would not be more political, but only more democratic.

I would note, too, that one of the benefits that

5 MR. McCOMBIE: (cont'd.) we have derived from the establishment of this Royal Commission..and I in no way want this to sound facetious...but we have received an enormous amount of material that otherwise we would not have received, from places such as the Workmen's Compensation Board.

That is the kind of material that should be out in the public eye so that workers, their representatives and everyone knows what is being dealt with.

10 So, too, in most other appeal systems there exists the right to question those responsible for an adverse decision. We have learned, and certainly Injured Workers Consultants knows all too well, that the Workmen's Compensation Board does not allow this practice in its appeal system.

15 Dr. Stewart from the Compensation Board, in his testimony, admitted that he didn't have any personal objection... he wouldn't object personally to appearing at a hearing...but was constrained by Board policy.

20 I will obviously defer to my lawyer friends in such areas as natural justice, but I would certainly suggest that there is nothing natural or just to workers who claims are adjudicated and rejected by doctors who will not explain their decisions in an open hearing.

25 I have already forwarded a decision by the Health Disciplines Board involving a doctor from the ACOD, to the Commission, in which the Compensation Board went to incredible lengths of lobbying the College of Physicians and Surgeons to overturn one of their already-decided-upon issues. This was a direct intervention from the point of the senior medical staff at the Compensation Board. This was after it had been determined that the Compensation Board was not a party to this proceeding.

30 There is little wonder, then, that the Board is seen as having such a paranoid fetish for secrecy. I would also

5 MR. MCCOMBIE: (cont'd.) presume from this Health Disciplines decision that notwithstanding Dr. Vingilis's early testimony, a doctor/patient relationship does indeed exist between ACOCD doctors and WCB claimants.

While on the topic of doctors, I would also like to reiterate the opinion that those making essentially adjudicative decisions have absolutely no training or knowledge of the nonmedical aspects of workers' compensation.

10 Doctors from the ACOCD, during their testimony before the Commission, admitted that they had never heard of such matters as the benefit-of-doubt policy, the pre-existing-condition policy and other internal policy matters of workers' compensation.

15 In Professor Eissen's critique of Professor Barth's study, the point is strongly made that many administrative and adjudicative decisions are made by nonqualified medical personnel. The response of one of the Board officials during testimony was that it seemed that Eissen wanted everyone at the Board to be a lawyer.

20 Well, clearly one needn't be a lawyer to take medical opinion and apply it to adjudicative policy. Indeed it strikes me as indicative of the general attitude of condescension well-known to injured workers that Mr. MacDonald would value his nonmedical staff so little.

25 Once the guidelines for entitlement and those who are to adjudicate them are established, we then arrive at the thorny issue of how to determine the level of compensation.

We've heard a lot about the subtle distinctions between impairment and disability, and for good measure the term 'handicap' has been added.

30 It is frankly of little consequence to victims of asbestos disease to ponder whether they are suffering from

MR. McCOMBIE: (cont'd.) impairment, disability or handicap. The bottom line is they are suffering.

5 The method of compensating those who are suffering and permanently disabled has been the subject of a study, Professor Weiler's report, and the consequent White Paper, now in its fourth year.

10 While the current system of, quote, impairments, has been discredited by Weiler and discredited, I might add, as long ago as 1927 in an International Labour Organization study on the permanently disabled, his alternatives have been met by resistance by injured workers and organized labour and others.

15 Time prevents me from going into a discussion on the whole issue of compensating the permanently disabled. It's one which I have spent a great deal of time on, and I can assure everyone it's an extremely complicated issue, but that battle is now being waged by Injured Workers on another front.

20 I am submitting, however, a document, the response of Injured Workers to the White Paper, which outlines many aspects of this topic.

In general, it is my feeling that a workers' compensation system and occupational health and safety body should be far more actively protecting the rights of workers.

25 We have seen Dr. McCracken's letter of 1976, to the physicians of Ontario. As far as I'm aware, there is little else in the way of an educational campaign within the medical community about the problems of occupational disease.

We have heard, from the best of my memory, every doctor admit that a greater use of autopsy, for example, would be useful, and yet nobody seems to have done anything about it.

30 We have heard that there is a very small, select group of doctors knowledgeable about occupational disease, in

MR. McCOMBIE: (cont'd.) particular asbestos-related disease, and yet this knowledge is being jealously guarded like a medieval guild or a secret society.

Recently the chairman of the Compensation Board, Lincoln Alexander, was quoted as urging employers to, quote, "put him out of business". Certainly I would obviously endorse that sentiment for a number of reasons, but it's the kind of motherhood statement that we all make, and certainly that's something that I would like to say. I would like to be put out of my business, too, representing injured workers, because I would like to see no more injured workers.

But that kind of thing is not going to happen with the dark secrets that are continuing to be kept in the musty vaults that seem to exist at 2 Bloor Street, and 400 University and Grosvenor Street. Every once in a while we get little shafts of light that become pried out by things such as Royal Commissions or Professor Weiler's study, but the whole question of opening up the process and educating workers and doctors is, to me, of paramount importance.

Well, of course, we argue that much of this will cost money, and David dealt with this this morning. I would respond, too, that it is not only a question of costing more money, but of placing more of the cost on those responsible, rather than on federal, provincial and municipal taxpayers as is currently the case, and I think we have to keep in mind that those costs are there. They don't just...when you change a system of compensation or health and safety, you don't incur new costs, you often just shift costs that are currently being borne elsewhere.

In 1980, according to one of the tables in Professor Barth's study, the capitalized cost of mesothelioma and asbestos claims totalled less than half a million dollars.

MR. McCOMBIE: (cont'd.) In the same year, according to the Financial Post 500, Johns-Manville's net profit was about nineteen million dollars.

In other words, most asbestos-related claims in 1980 represented less than three percent of the net profits of the largest employer of asbestos victims.

Since then, of course, Johns-Manville, as well as Bendix, have stopped paying anything towards asbestos victims. Those costs are now distributed among all the other employers in the province.

One would be hard pressed to avoid the conclusion that these companies have cynically used up Ontario workers in reaping vast profits, only to wash their hands of any responsibility for damage they have incurred.

Professor Barth's discussion of employers' posting bonds before they come into their jurisdictions is something I think is well worth considering.

In concluding, I would like to return to my early remarks. To me, the objective of this Commission is to help prevent another such Commission being needed ten or twenty years from now, either on the subject of asbestos or on some other toxic work place hazard.

I would hope that the Commissioners would always keep in mind the vast human dimension to the problem in considering their recommendations. Whatever justice arises from your report will not bring John Dodds, Tommy Dunn, Sueng Chull Lee back to life. It may, however, help to prevent future such victims.

I would finally like to pay tribute to Gus and Betty Glazer, Betty Cauchi, Eugene Girdouskas, Doug Ray and Davie Bishop, Tommy and Lucy Dunn, and all the thousands of other workers and their families who I have never met and who have borne

MR. McCOMBIE: (cont'd.) the brunt of this outrage, and struggle to prevent it from happening to others...but in particular to the courageous Mrs. Odette Dodds and the memory of her late husband, John.

Thank you.

DR. DUPRE: Thank you, Mr. McCombie.

Mr. McCombie, dare I take it from your statement that the Injured Workers have a paper on the issue of impairment/disability that you are leaning on?

MR. McCOMBIE: We have. There is a group known as the Association of Injured Workers Groups, which is a coalition of injured workers' organizations. I have given Mr. Laskin a copy of their response to the White Paper. There will also be, as you may or may not be aware, there's currently hearings going on in the legislature on the White Paper, and we are making submissions to that.

DR. DUPRE: I thank you for that submission.

Now, Dr. Mustard or Dr. Uffen, questions?

(no audible response)

Miss Jolley?

MISS JOLLEY: Would you like to take a break before?

DR. DUPRE: That might ...

THE INQUIRY RECESSED

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THE INQUIRY RESUMED

DR. DUPRE: Miss Jolley, if you please.

MS. JOLLEY: Once again, we wish to take this opportunity to express our thanks to the Royal Commission on Matters of Health and Safety Arising from the Use of Asbestos in Ontario, and summarize some of the main points that have emerged in the last two years of hearings and to state once more our

MS. JOLLEY: (cont'd.) clear desire to eliminate the use of asbestos in the work places of Ontario.

5 Before I begin, however, I would also like to take this opportunity to express our thanks and appreciation to the staff of this Royal Commission. We think that John Laskin particularly has done an excellent job of leading the testimony over the last two years, even though he did ruin many of my lunch hours by taking over my lines of questioning and leaving
10 me groping over my sandwich as to what I would pursue in the afternoon.

Linda has done a superb job of organizing the enormous number of details involved in the smooth running of this Commission. She also should be congratulated for bringing the Commission in way under budget.

15 As well, I would like to congratulate Les and his staff, who have prepared a first-rate transcript of the proceedings, often under rather amazing and difficult circumstances.

20 And thank the Commission for keeping our paperworkers employed.

The rest of the staff as well have been very friendly, co-operative and friendly to work with.

25 As for the Commissioners, we anxiously await your report before we are prepared to congratulate you, although it is clear that you have to date shown very real concern for the task at hand.

We plead only with the chairman, please avoid baseball analogies!

30 As we stated at the beginning of the Royal Commission, and nothing has happened that has changed our minds, this entire exercise was really unnecessary. It did, however, fulfill the main goal of the government, the public outcry that

MS. JOLLEY: (cont'd.) created the Commission in the first place has subsided to a mere whimper, and only then when those of us attempt to create and maintain that public outrage.

Despite these feelings, however, the Ontario Federation of Labour took its role seriously as an active participant in the hearings, and I have attended almost every session.

The months of testimony over health effects have merely reconfirmed our view that asbestos is a very potent human carcinogen that has no safe threshold.

We have learned much about the insensitivity of epidemiology as a tool for assessing health risks, and yet the epidemiological studies around asbestos are probably some of the best in the field.

All of the studies presented to the Royal Commission suffered from some methodological problem or another, whether it be the selection of the survival population, the followup of only seventy-five percent of the population, inadequate latency, a small population at risk, or the consistent and difficult problem of lack of exposure data.

The evaluations prepared by Robin Roberts and Harry Shannon, both of McMaster University, however, should clearly indicate to the Commission that you cannot dismiss the frightening conclusions from the Dement Paper, as some would have you do.

A failure to consider his increased risk projections will doom the workers in this province to a much higher level of risk than previously accepted.

As well, the Dement and Peto studies make it quite clear that chrysotile asbestos, or that nice white stuff, is a very serious health threat. Indeed, it does not produce as much mesothelioma as the amphiboles, but as Julian Peto pointed out, mesothelioma is not the major cause of death for asbestos workers, lung cancer is, and the fact that Dement found four times more

5 MS. JOLLEY: (cont'd.) lung cancer than expected in the general population, and Peto found almost five times more among his post-1951 cohort, indicates that chrysotile is a major killer.

This evidence, combined with the fact that animal studies have shown chrysotile to be equally, if not more, dangerous than that dirty blue stuff must persuade the Commission that they have to treat all asbestos fibers alike.

10 It is clear as well that risk increases significantly as the fibers move out from the mining and milling operations to a more refined type found in various manufacturing uses of asbestos. We would therefore argue that it is inappropriate to use the mining risk estimations from MacDonald's studies for setting standards in manufacturing processes.

15 The designated substance standard that the Ministry of Labour has set in Ontario is totally unacceptable to us in labour. Not only did they ignore the risk estimations and recommendations for a zero-point-five fiber standard for all fibers, presented in their background document, they have created a standard that the method of monitoring cannot support.

20 The phase contrast microscope and the membrane filter method cannot differentiate between fibers. Indeed, Dr. Chatfield has presented evidence that it cannot even measure the fibers that are suspected of causing the health effects, since its resolution power cannot observe fibers of less than zero point two microns in width.

25 In fact, Dr. Chatfield predicts that the phase contrast optical microscope measures only two to twenty-five percent of the fibers more than five microns in length, and perhaps only zero point one percent to one percent of the total number of fibers in our work place.

30 The Dement study showed that the risk actually doubles for lung cancer at levels of zero point five percent and

MS. JOLLEY: (cont'd.) our standard for chrysotile asbestos is twice that.

To put it in a clearer perspective, however, let's look at what one fiber per cubic centimeter actually means.

Every hour a worker breathes in approximately one million cubic centimeters of air. That means in every hour a worker takes in one million fibers of asbestos.

Over an eight hour day, that means eight million fibers.

Now, much has been made about our body's defence mechanisms that are able to clear our tracheal/bronchial systems of any foreign matter. Indeed, for a healthy worker ninety-nine percent of the foreign matter can be removed by the elaborate systems of ciliated escalators, phlegm production and the action of the macrophages.

But that still means that eighty thousand fibers remain for every work day that a worker is exposed to the Ontario standard for chrysotile asbestos.

Even if you reduce that level to the zero point five fibers requires for amosite, or the zero point two fibers per CC required for crocidolite, forty thousand, or sixteen thousand fibers, remain in the lungs each and every work day.

As Dr. MacDonald told the Commission on June 25, 1982, and I quote:

"They will have a risk of lung cancer right down to point zero zero zero zero one fiber per annum. You know that's what the implications are - that there is a finite risk with every fiber you are exposed to, including that which occurs naturally in the air".

Of incredible concern as well is the lack of an asbestos standard for construction workers in this province.

5 MS. JOLLEY: (cont'd.) Even though a procedural standard is now well under discussion, construction workers are still being exposed to intermitently high levels of asbestos during renovation, removal and demolition, and many of those projects would not even fall under the present requirements for notifying the Ministry of Labour.

10 After two years of hearings we are even more strongly convinced that our original recommendations for the immediate elimination of nonessential uses of asbestos and the phasing out of all other uses by 1985, is the only acceptable public health policy.

15 We object to the statistical manipulations that were presented by Kenny Crump, the AIA witness. Attempts to place risk into a discussion of days and hours of life lost between ages sixty and seventy as a result of asbestos exposure, and then a comparison with other risks, especially those of choice, is outrageous.

20 Not only does it minimize the real loss of life to the asbestos victims by averaging it over the entire population, but it states quite clearly that the value of life diminishes as people get older.

25 Now we appeal to you as Commissioners, who after all, as the Chairman told us during Dr. MacDonald's testimony two years ago, you were not born yesterday. Are you prepared to state that your later years of life are not as valued or as important as your years as an adolescent?

The closer one gets to those older years, the less likely they are to casually dismiss their importance.

30 Surely you cannot forget the tears and the very real pain that the widows and their children have displayed before this Commission. Are you as Commissioners, or are we as a society, prepared to tell them that that loss of life expectancy for their husband or their father or their son was

MS. JOLLEY: (cont'd.) somehow unimportant?

Perhaps Dr. Crump would like to explain that to them. We cannot.

As well, the implication that is involved in the comparison of risk from work place exposure to asbestos with the risk involved in driving a car, for example, is outrageous. Even if workers were fully informed about the true risks on their jobs, to pretend that there is something voluntary about work place exposures, especially with a million and a half unemployed, is ludicrous.

Again, we assert our opposition to the use of cost-benefit analysis to determine, quote, "socially acceptable levels of risk". The use of cost-benefit analysis is fraught with even more subjective choices and assumptions than risk assessment itself. The estimations of risk varied thirty to thirty-fivefold in the studies reviewed by the Simpson Committee, and by a thousandfold among the studies reviewed by Nicholson for the Swedish government.

Which risk estimation do you intend to select to predict the cost? How are you going to value the life of an asbestos worker? How do you intend to deal with the equity question since the cost of ill health and death are borne only by the workers, while the costs of compliance are borne by society as a whole, as consumers?

Those decisions are about as value free as literacy testing for black voters in the southern U.S. used to be.

Keep in mind as well that the author of the study of the feasibility and cost of controlling work place exposures to asbestos fibers did not interview any worker or any of their representatives in his attempt to study costs. That merely confirms our view that cost-benefit analysis is essentially an

MS. JOLLEY: (cont'd.) antidemocratic attempt to realign regulatory priorities.

5 Finally, how did we decide in Ontario that we would accept the concept of acceptable risk in our occupational health standards? And, we ask, acceptable to whom?

10 The study on workers' attitudes carried out by Luce and Swimmer for the Commission asked workers if they supported the OFL's position to ban the use of asbestos by 1985. We initially objected to the actual question because it distorted our policy by minimizing the real health risks in balancing them against the higher costs involved in substitution.

15 As well, they made no comment on the fact that we stated quite clearly that only six tested substitutes would be used, and that economic planning must take place to retrain and place any worker dislocated by a phasing-out policy.

20 And even despite that clear distortion of our policy in the question, a substantial majority of workers whose jobs could be considered to be directly at stake answered that they favored such a law because of the health risks involved in the use of asbestos. They clearly don't think that any risk is acceptable.

Our work must not add to the already-high incidence of cancer that we experience in our general population.

25 We were very disappointed in the analysis of the standard-setting procedure, by Doern, Prince and McNaughton. The new asbestos standard provided the authors with a very good opportunity to analyze the entire process, and who wins and who loses in the end. They chose only to focus on a public meeting that happens at the end of the process, and provided a very superficial analysis of the event.

30 Labour has been increasingly frustrated with the standard-setting process in this province. Decision rules have

MS. JOLLEY: (cont'd.) been agreed to by the ministry with no outside input - at least from labour, in any event. We are invited to write briefs on each substance, that are then ignored, and no accounting is made for those decisions.

Not only is the actual asbestos time-weighted average unacceptable, as Doern, Prince and McNaughton point out, the sections requiring assessment and control programs provide the employer with the opportunity to strike a discreet bargain with the work force over the actual implementation of the standard.

That approach may allow employers latitude in implementation, but it places the effectiveness of maintaining even these minimal protections directly on the bargaining strength of the workers. Clearly the unorganized get left with personal protective equipment, while a strong union may insist on the substitution of a safe alternative.

Occupational health standards are supposed to protect workers' health, although the ministry's lack of a statement of purpose for the five designated substances so far, and the levels set, make us wonder.

If the government wishes to treat industries differently and relieve the inequitable burden on small business, for example, let them recommend subsidies or tax credits and have an open discussion about their appropriateness, but do not leave those workers at greater risk.

The internal responsibility system as it has evolved in Ontario has also created an enormous amount of controversy within the labour movement. It is clear that all the various participants have differing views of what that system actually means, and some resolution of these conflicting views is absolutely essential.

The Doern, Prince and McNaughton study again stated that all the inspectors and the regional managers agreed that the internal responsibility system works most effectively in

MS. JOLLEY: (cont'd.) unionized work places.

5 How do you reconcile that to the fact that the majority of orders issued by the inspectorate in 1980/81, a sure sign of its failure, were in organized sites....and, even though the inspectors visited almost three times more unorganized work places during that time?

10 What concerns us about those figures that were presented in December, 1981, by the ministry to the Standing Committee on Resource Development, is that if there is an understanding among the inspectorate that the internal responsibility system does not work as effectively in unorganized sites, why do their enforcement policies not reflect a more active policing role?

15 Labour had high hopes for the internal responsibility system at the beginning, since we saw it as providing a real opportunity to participate in decision making and problem solving over our own health and safety. Unfortunately, many organized workers are becoming extremely disillusioned with the lack of any real power to effect legitimate change.

20 After all, as Peter Pelmeur told us last summer, quote, "He who pays the piper gets to call the tune".

We question the minister's almost total reliance on an enforcement philosophy that does not work in the majority of work places in this province, and where there is not even a mechanism for worker participation, in small businesses.

25 Unless the government is prepared to actively promote unionization among Ontario workers, an action that we would certainly support, the ministry must take its role in enforcement seriously.

30 We are not interested in scrapping the system. We want to strengthen it by providing real decision making powers to the workers for the protection of their health and safety.

5 MS. JOLLEY: (cont'd.) Another concern that has evolved around the Occupational Health and Safety Act are the numerous interpretations provided by the Ministry of Labour's legal branch. For example, despite the fact that the ministry assured us that physician in the designated substance regulations would mean the worker's own doctor, an assurance that was contained in the actual background document for the designation of lead and reiterated at a public meeting over lead, by Dr. Pelmear, the ministry has interpreted physician to mean company doctor.

10 The ministry changes the rules for these interpretations, which reverse promises or even legislative intent, and half of the time we are totally unaware of the newest ruling, even though we were promised copies of the interpretations on a regular basis.

15 The ruling on company physician is a very real concern, especially given the letter to the Commission from Dr. Vingilis as a result of our questioning.

20 Just as we have expressed in our numerous briefs over the designated substances, Dr. Vingilis, a physician who resigned from the Chest Disease Service, states serious concern about the powers given these physicians to determine the fitness of workers and the potential abuse of medical confidentiality, and the lack of protection provided to workers under these regulations.

25 Once again, we recommend that if there is some justification to the biological monitoring of workers exposed to certain chemicals, then independent clinics should be established, financed by the employers and run by the joint committees with veto power over the hiring, for workers...a model found easily in Sweden.

30 Continually monitoring for asbestos disease is

MS. JOLLEY: (cont'd.) not a preventative measure. It merely identifies the existence of disease, and as such is only useful for compensation purposes.

There is clear evidence that the Workmen's Compensation Board guidelines for the compensation of asbestos disease are not appropriate. While there is a clear linear relationship between increasing dose and increased risk, it is clear that a worker does not have to be continuously and repetitively exposed over a majority of his work life, to develop an asbestos-related cancer.

Both Nicholson and Peto also stated that the concept of latency was false, and a guideline that requires a fifteen or twenty year latency is clearly inappropriate.

Although several witnesses tried to emphasize that the benefit of the doubt was given, and that guidelines were not strictly enforced, Dr. Dyer's testimony about the Outreach program indicated that there was rigidity in all of the requirements except for mesothelioma.

These guidelines are developed internally without input from outside groups. I have been told by Ed Waddell, who sits on the joint consultative committee, that they have no real input into these guidelines or any Board policy.

As well, we are very concerned about the very significant power that the ACOD has in determining whether a worker has asbestosis, and what degree of impairment will be compensated. Even if there is disagreement in the committee, this is never transmitted to the Board, and Dr. Cameron Grey told us quite clearly that the benefit of the doubt is not given in this committee, despite the policy that says it applies in all levels of adjudication.

As well, asbestos workers who attend the Chest Disease Clinic, where they are told that nothing is wrong, and

5 MS. JOLLEY: (cont'd.) then go to their family doctor where they are told that they have asbestosis, get to have their case reviewed by none other than some of the very physicians who denied the presence of disease in the first place - a point that was made eloquently by Eddie Cauchi in his cross-examination last summer.

10 We have submitted an extensive brief on workers' compensation and the fair treatment of the victims of our past failures, and the testimony over the last summer merely reconfirms those recommendations, and we also accept Johns-Manville's kind offer - repeated by Dr. Kotin during his last appearance - that all victims of asbestos ought to be compensated.

15 Over the last two years we have also heard a great deal about smoking, especially from the industry witnesses and Dr. Paul Kotin in particular. We reject these attempts to deflect the blame onto the victim by emphasizing the issue of smoking.

20 We certainly do not deny that smoking is a significant health risk, or that smoking and asbestos multiplies the risk, but nonsmoking asbestos workers do get lung cancer and smoking has no impact on the development of mesothelioma or gastrointestinal cancer.

25 Our concern at this Commission is to eliminate the risk in our work places, and to this end we suggest that perhaps the Commission should be guided by the approaches taken in the U.S., England and Sweden.

Testimony by Richard Leman of NIOSH before the Royal Commission on Asbestos on July 8, 1981, indicated that NIOSH recommends that people not smoke. Quote:

30 "However, we feel in our interpretation of the Occupational Health and Safety Act that we don't have the authority to tell people to smoke or not to smoke, that our authority lies in making

MS. JOLLEY: (cont'd.) "recommendations for providing a safe work place no matter what the personal habits of the individual might be".

Similarly, Dr. Acheson, who wrote the report for the Simpson Committee in England, testified on July 28, 1981, and I quote:

"But I do not consider...and again I'm expressing a personal view...that the tobacco factor in any way reduces the responsibility of the asbestos industry to control their standards, to control the dust levels. I think it should be no more dangerous...and again I'm expressing a personal view...to smoke on the work floor as in the board room in an asbestos factory".

Finally, the Swedish delegation stated that the prohibition of smoking could not be agreed to by the social partners. Mr. Harold Linton from the Swedish Ministry of Labour stated, quote:

"Smoking is a general health problem for the entire population, and it is mainly a question for the Minister of Social Affairs, and she has been trying to put forward a bill which should ban smoking in all official buildings, but she hasn't succeeded".

If the Ministry of Health in this province wishes to issue regulations controlling peoples' lifestyle, then so be it, but we are sure they will have trouble and difficulty persuading their colleagues in the Ministry of Revenue, who took in three hundred and forty-five million dollars in cigarette taxes between April 1, 1981 and March 31, 1982, not to mention the federal income raised by the three cents on every five cigarettes in excise tax, or the twelve percent sales tax.

The Special Advisory Committee on Carcinogens,

5 MS. JOLLEY: (cont'd.) and Dr. Mustard was a member of the Advisory Council on Occupational Health and Safety, stated that the removal of asbestos alone could eliminate ninety percent of the cancer among the high-risk population, and that smoking would eliminate seventy-nine percent of cancer.

Let us deal with the exposures that we can control.

10 Finally, I wish to deal very briefly with the issue of corporate responsibility. We think that there was evidence that the hygienist who served the Canadian plants and mines was unaware of exactly what the government's guideline for asbestos exposure was until 1974-1975. Corporate officials have reassured us that it was their policy to comply with either the standard of the country of operation, or the American standard, whichever was more stringent, and yet there was clear evidence
15 that not only did they not know what the guideline was, the levels found at the Reeves Mine - levels as high as two hundred and twenty fibers per cubic centimeter - were clearly not in compliance with anyone's standard.

20 Mr. Reis, in a response to a question posed by Dr. Mustard, stated quite clearly that the tort liability situation provides a clear incentive for industry to test and control any potentially hazardous new chemical, and yet Johns-Manville declares bankruptcy to avoid further responsibility for the thousands of suits against them in the U.S. What's the incentive in that?

25 Right here in Ontario, our workers' compensation system has enabled them to drop their asbestos production line and leave the rest of the asbestos industry, and industry generally, with the financial responsibility for any future claims, in addition to the already large support of six point two eight million
30 dollars provided through collective to Johns-Manville from the other industries in that rating group.

MS. JOLLEY: (cont'd.) Clearly there have to be mechanisms to prevent the avoidance by corporations of the financial responsibility for their victims.

As well, I wish just to raise the issue of the records. We had evidence during the testimony last summer with both Dr. Finkelstein and the doctor from Scarborough that suggested that Johns-Manville was not participating in any of their studies by providing work records of their employees.

I checked with Dr. Finkelstein and indeed he has yet to receive those records. I think that something must be done about industry's refusal to co-operate with our Ministry of Labour.

Originally it was our intention to develop a post-hearing brief which summarized all of our arguments supported by the testimony taken from the last two years, but we have decided that we have already expended a great deal of energy and resources on the problem of asbestos, and our members face many more health hazards than asbestos with even less confirming evidence.

It is our intention to move on to the thousands of other chemicals that our workers face every day. For example, NIOSH, in their 1980 registry of toxic effects, have listed some two thousand, eight hundred chemicals for which there is some evidence of carcinogeneity, and some eighteen hundred chemicals for which there is some evidence of teratogenicity, or reproductive effects, and there are thousands and thousands of chemicals that have effects on all of our other body systems.

If, with all of the information we have on asbestos, we cannot develop a prudent public health policy that eliminates the risk, by substitution, as the international labour organization recommends, what hope have workers for our future?

5 MS. JOLLEY: (cont'd.) It is now up to you as Commissioners. The working people of Ontario await your report. Your recommendations may decide who will live and who will die.

Thank you.

DR. DUPRE: Thank you, Miss Jolley.

10 I have one question that comes to mind, Miss Jolley. I take your point about chrysotile as distinct from the other asbestos types, I also take your points on the inadequacy of the ministry involvement. Can I take it that your sense of inadequacy about the control limit relates to the numbers and the numbers only, or do I take it that you are concerned not only about the ministry's numbers, but about the fact that the ministry differentiates among fiber types?

15 MS. JOLLEY: I think we have a number of points where we have real concern. Number one, the levels, of course, concern us. We think that it should be a policy to eliminate the use of nonessential uses of asbestos immediately.

20 Clearly, one fiber per cubic centimeter, zero point five and zero point two for crocidolite, entail risk, and we are unwilling to accept additional risk in our work place.

25 In addition, we are very concerned about the setting of levels that differentiate between the fibers, because we don't think that the evidence shows that chrysotile is somehow less dangerous. We think the Dement study especially should give us special concern about that, as well as the animal studies, and because it's our general policy in a generic cancer policy to suggest that animal studies must be taken very seriously, we don't think that you should differentiate between the hazards of those different fibers.

30 Of real concern as well is the fact that the monitoring requirements under the standard, by using phase contrast microscopy, cannot differentiate between those standards...

5 MS. JOLLEY: (cont'd.) or differentiate between the fibers. They can't determine what they are looking at. Indeed, they can't even determine whether it's an asbestos fiber or another fiber.

10 Quite apart from that, we are concerned about just the general inadequacies of the phase contrast approach to measuring. We don't want to necessarily recommend to move into a scanning electron microscope or TEM, because essentially we would like to abolish the use of asbestos so we are not necessarily...although if we set levels of zero point two fibers per cubic centimeter and require that it be measured by a scanning electron microscope, it would effect what we are anxious to achieve.

15 I think the other part of the designated standards process that the ministry has set up, which Doern and Prince and McNaughton addressed, though, is the whole issue of discreet bargaining that goes on over the implementation in the control program and the assessments, and we've had some really very bad experiences, especially under the lead standard, which is the one we've had the longest, where the assessments have not been working, the workers are not having real input, that exposures are not being properly monitored, workers are being...employers are stating that workers are not part of that and therefore not under the control program, etc.

25 Our experience is that, you know, if that's happening in organized work places, we have no idea what is happening in the unorganized work place, and I think that example from London indicates that not much is happening in unorganized work places.

30 DR. DUPRE: Then I take it from your answer, Miss Jolley, that your position would be that it is inadvisable to differentiate among fiber types with respect to the setting of control levels?

MS. JOLLEY: Yes.

5 DR. DUPRE: And may I ask you this, Miss Jolley, would you deem it also inadvisable to differentiate among fiber types if a policy was one of phased elimination?

10 MS. JOLLEY: I think to be realistic, as far as I can remember, and I may be slightly inaccurate, Gyan Rajhans, when he was on the stand representing the Ministry of Labour, stated that in fact he didn't know of any crocidolite used in Ontario, and that indeed a zero point two fiber limit for crocidolite essentially meant a ban in the sense that they could not achieve it through engineering controls, they could only achieve it through putting workers in space suits, which is the unacceptable.

15 So we already have, essentially, a ban on crocidolite. As far as I know, I don't think that there is all that much amosite used as well, and therefore I don't think that we should differentiate in our policy.

20 I think the question is a question of essential and nonessential uses, which we aren't prepared to address because we have yet to be persuaded what is essential and what is nonessential.

25 DR. MUSTARD: Can I come back to this fiber question as well? During some of the testimony the question of other fibers was raised, and the issue of fiber size and dimension was brought up as an issue that might be important, so while we are on this subject do you have any views about fibers in general and this question about fiber dimension?

30 MS. JOLLEY: Well, we heard the testimony as well that most of the reputable scientists who came before us claimed that it was the diameter as opposed to the length, although clearly the length had some implication.

But I don't think that we can regulate on those

MS. JOLLEY: (cont'd.) bases. I don't, as a scientist feel...or I'm not a scientist....feel that I can really comment on that whole...

DR. MUSTARD: I was trying this thing about the question of other fiber materials that are used.

MS. JOLLEY: For example, fiber glass?

DR. MUSTARD: Yes. Do you have any views on this subject in relation to that?

MS. JOLLEY: I think we expressed in our brief to the Royal Commission some very real concern about the animal studies around fiber glass, and the potential carcinogeneity.

I think that certainly the negative epidemiological studies that have been produced around fiber glass are not adequate to persuade us that that's true. They suffered from all of the inadequacies of epidemiological studies, and certainly the major experts in the U.S. who presented testimony during the generic cancer policy stated that negative epidemiological studies should not take precedence over positive animal studies.

DR. MUSTARD: Can I change the subject? I wonder if you could outline what you think might be a good standard setting process? You indicated in your statement that you weren't happy with the current standard setting process.

MS. JOLLEY: I think in our submission to your advisory council over the generic cancer policy that we indicated that a committee, a permanent committee, ought to be set up. We suggested that a majority of labour ought to be placed on that committee, because after all it is labour that has to bear the risks of any decision making taken.

We think that that permanent committee should be made up of labour and industry, with technical input. But essentially decisions are not technical and they are not scientific. They are ultimately social and political decisions,

MS. JOLLEY: (cont'd.) and we think that workers should be very much a part of that decision making process.

5 DR. MUSTARD: One final question. You outlined a problem in terms of ministry interpretation of regulations and acts. Did you have any views about how that problem could be resolved, from your standpoint?

10 MS. JOLLEY: I don't know. It's not something that we have actually been able to deal with because we have been getting the interpretations in a haphazard manner. We were promised at a meeting with the ministry last summer, CUPE representatives, and I was present representing the Ontario Federation of Labour, that the ministry would undertake to make those interpretations available immediately.

15 We, of course, I suppose, could take those interpretations to court if and when we are confronted with an order issued over the interpretations. Our situation among the organized work force so far has meant that the actual organized power has determined that they have not insisted on the company physician in most industries.

20 But it leads us to be bargaining yet again, even when the intent of the bills seem to be clear to us.

DR. DUPRE: Dr. Uffen?

DR. UFFEN: Just one question. I think it's just a matter of clarification of something that you said in your presentation a few minutes ago.

25 You were quoting one of the witnesses and I think you said, you quoted him as saying, 'the concept of latency is false'...

MS. JOLLEY: I didn't quote him. I just...

30 DR. UFFEN: Did you mean that there is no such thing as latency in asbestos-related disease, or did you mean that the way it is being used by the Workmen's Compensation Board

DR. UFFEN: (cont'd.) in its assessment of sick people...

5 MS. JOLLEY: I think what we meant was the way it is being used in the guidelines is inappropriate, that indeed the latency that comes up statistically in epidemiological studies is quite different from the actual development of disease in the workers exposed, and older workers could in fact develop disease after much shorter periods of time, as a result of other risk factors coming in.

10 DR. UFFEN: Because I'm not the medical person here I'm exaggerating. Are you suggesting that some of these illnesses occur in a year or two, and not in ten, fifteen years?

15 MS. JOLLEY: Well, the whole development of the disease is an ongoing process. I mean, presumably once the cancer starts it can go forward, it can be stopped, it can...whatever.

But the process of disease, what the latency as determined by epidemiological studies is, is the point of death, not necessarily the point of disease that is being identified, and we are stating that the time from first exposure to...

20 DR. UFFEN: Then I do understand you, you are questioning the concept of latency as put forward by medical witnesses?

25 MS. JOLLEY: Well, we suggest that both Julian Peto and Nicholson made reference to the fact that a rigid interpretation of latency is inappropriate. The disease can develop earlier than...

DR. UFFEN: If that's what you mean, I understand what you said. I just wanted to make sure. A rigid interpretation of the period of latency is one thing, rejection of the concept...

30 MS. JOLLEY: No, no. We were not. I'm sorry. It was...

DR. UFFEN: Thank you.

5 DR. DUPRE: One last question, if I might, Miss Jolley. I take your point that calculations of comparative risk are really odious when what is being compared are involuntary work type risks with voluntary or lifestyle types of risks.

10 If part of our educational public policy is to have an informed work force, then I take it the objection you formulated does not apply to comparative risks that indicate for example, that certain kinds of mining are more hazardous than other kinds of mining, that certain kinds of manufacturing are more hazardous than other kinds of manufacturing, and I take it that the criticism that you advanced against risk comparisons is not meant to keep a work force from understanding that depending on where they are working they may in fact incur more significant or less significant risks?

15 MS. JOLLEY: Certainly not. I mean, we are completely in support of the right to know and the realistic estimations of what the health effects of their exposures will be. But the only thing that we worry about comparisons, even with the occupational groups, is do we divert all of our efforts accordingly, and I think that we have got to make some very careful decisions as to what we are about, and I want to prevent the loss of life to anyone, whether it be an asbestos worker or a miner who falls down a shaft.

20 DR. DUPRE: Thank you.

25 Well, perhaps this is an appropriate juncture at which to break for lunch. Do I take it, counsel, that we will resume at our usual quarter past two o'clock?

MR. LASKIN: That's fine, Mr. Chairman.

THE INQUIRY RECESSED

THE INQUIRY RESUMED

5 DR. DUPRE: Mr. Hardy, our keepers are in place
so are you ready?

MR. HARDY: Yes, sir.

DR. DUPRE: If you please, Mr. Hardy.

10 MR. HARDY: Mr. Chairman, Commissioner Mustard,
Commissioner Uffen, first of all, the Asbestos Information
Association of North America, through me, would like to express
its gratitude to you for allowing us to participate in this
proceeding. We have been more than impressed, I think, throughout
the proceedings, with the fairness of the Commissioners, and
moreover, their willingness to endure long sessions of hearings
15 to learn comprehensively as much as can be learned about asbestos
issues.

This type of proceeding is much more deliberative,
much more reasoned, than the type of proceedings we sometimes get
in the United States, and we have been grateful to have the
opportunity to participate.

20 Because of the comprehensiveness of the hearings
which you have held, the opportunity which you had to hear most,
or a good percentage, of the world's medical experts on asbestos,
the report you write will be important not only to the Province
of Ontario, but also to the regulatory community elsewhere in
the world, which rarely has the opportunity to have presented to
25 it a report from a group which has taken the time and the effort
to so thoroughly review all the evidence.

I think your report also will be important beyond
the regulatory community, to the public both in Ontario and
elsewhere, because I believe it's important to the public to
30 receive from review bodies representing the best expertise
available sound and solid judgements, conclusions and

MR. HARDY: (cont'd.) recommendations.

5 I think on the one hand the public deserves to know when there are risks that it should not be exposed to, and at the same time I think the public depends on review groups, people with expertise, to tell them when fears have got out of hand and should not cause concern which sometimes gets generated without that sort of expert guidance and advice.

10 Today I would like to briefly summarize what we feel the record before this Commission has shown and the recommendations which we believe reasonably flow from that record.

15 AIA filed with the Commission last August a written summary of the evidence on health monitoring and regulatory issues. To a large extent I think I will be summarizing it, and therefore try and do very briefly what's in that brief, but if the Commissioners would like to ask any questions on anything in that brief, I would be more than happy to try to answer them.

20 There was a good bit of discussion this morning suggesting that the issue of asbestos may boil down to an issue of dollars or profits versus human life, and I think that the issue is in fact much more complex than that.

25 I think reference was also made pointing to the fact that there are thousands of suspected carcinogens. It is a fact that other occupational risks can occur through accidents, and I think the society, any society, with its admittedly scarce resources or limited resources must, if it is to benefit all, to the greatest good of all, look closely at each such risk to determine how great a risk it is, determine what sort of expenditures are worthwhile to reduce that risk without taking away from the expenditure that is available to reduce other perhaps greater risks.

30 If too much attention, expenditure, is focussed on one risk, I think it's inevitable, given scarce resources, that other risks will not be properly controlled.

MR. HARDY: (cont'd.) Similarly, there was reference made this morning to not allowing asbestos to be used unless it was an essential use. I'm not sure exactly what my compadres here meant by essential use, but I think it is a difficult problem to get into, deciding as a regulatory matter what is and isn't an essential use, and let me just give a little example.

Asbestos has for many years been used as a constituent for pipe. That's not an essential use if you mean do you have to have asbestos to make pipe. It's clear that iron ductile pipe is used widely, polyvinyl chloride pipe is used widely. But I think it's also clear that there are chemicals used in those sorts of pipes that also may pose risk, and I think therefore it's a difficult question. It can't be said that the asbestos use is nonessential and therefore it should be thrown out, without also recognizing that the other uses may pose risks themselves.

The issue instead, I think, with asbestos, which this Commission must focus on is, can this chemical which, with uncontrolled use, is very dangerous be regulated, be controlled by all parties concerned, in such a way that the risks are so low that asbestos can continue to be used for the good of mankind in those products in which it is used and serves a vital purpose.

In looking at that issue I think we first have to recognize that great changes have occurred in the asbestos industry and in the way asbestos is used, over the past fifty years.

Great progress has been made by the industry first in mining, then in manufacturing operations, in significantly reducing worker exposures. The exposures which caused the unfortunate disease in some of the...in the past were orders of magnitude greater than those exposures which have been able to be achieved today.

MR. HARDY: (cont'd.) The pattern of asbestos use has also changed. At one time asbestos was widely used for insulation and sprayed insulation. Very little asbestos is used as insulation today, except in specialized industrial uses.

Instead, asbestos in those uses and in the uses of pipe or in friction products, is used in a nonfriable form which greatly reduces, if not totally eliminates in many of the uses, the release of respirable fibers even in installation or use.

As the industry has learned about the dangers of asbestos, it has taken steps to reduce worker exposures in both manufacturing and installation.

I think it's fair to say, as we said in our brief, and it was a consensus of the scientists who appeared before this Commission, that asbestos need not be banned, but rather can be closely controlled and can be used, and similar views were expressed at the symposium on asbestos which was held in Montreal last spring.

I'll just quote two. I think a number of the other persons who appeared there similarly agreed. First, the administrator of the Environmental Protection Agency from the United States, Anne Gorsage, appeared and stated:

"In light of our present information about asbestos, a total prohibition would reach beyond the foundation which science provides".

In the same vein, Dr. Dunnigan, who served as the director-general of the symposium and who was also a witness before this Commission, attempted to summarize his view of the consensus of that gathering, which was that:

"The collective wisdom of this international assembly does not advocate banning of asbestos".

And he went on to note, as I think AIA has noted many times, that:

MR. HARDY: (cont'd.) "This assembly has nevertheless issued numerous warnings and defined requirements as regards the implementation and systematic and concerted application of a rigorous and continual control of asbestos from its mining to its ultimate end use".

In looking at the medical evidence on asbestos I think it's fair to recognize that this is a substance which has been studied probably in as much detail as any substance which regulators must worry about setting controls for. The information on dose-response relationships is not exact, unresolved questions remain, but nonetheless the quality and quantity of information I think is better than is to be found for most substances which regulators must deal with.

That evidence does not answer definitively the question of whether at very low doses there is continued risk. It cannot, by definition, answer that question at this time, but on the other hand it is possible, as was discussed by a number of witnesses, to extrapolate from the evidence of higher doses to attempt to determine what the risk might be at lower doses. I think if that's done, as a number of the witnesses emphasized, what you get, most likely, is the maximum possible risk because if the dose-response curve is not linear, it will be less than linear and the risk will be lessened.

I think the Simpson Commission that was referred to this morning relied on such an extrapolation, but fully recognizing that what it was doing was looking at an outside, maximum possible risk.

Looking at those risks, and I think we went into to discuss this a lot in the brief and I don't want to try and go through all the numbers and the issues that are involved in applying those risks to make regulatory decisions, I think it's

5 MR. HARDY: (cont'd.) fair to say that looking at the body of the epidemiology evidence as a whole, when current standards are complied with the expected risks are within the range of other occupational risks.

10 Similarly, I think that those sorts of maximum estimates of risk show that even if there is any risk to the general population for the use of asbestos products, and that's an even-if question because there is clearly no definitive evidence on that, it's a very, very minimal risk which does not justify, I think, the sort of concern which is often expressed about the general population's risks of asbestos exposure.

15 There have certainly been here in Ontario, and also in the United States, considerable concern about asbestos that was used in the past in construction and building, and whether a person residing, working, going to school in those buildings has any danger to be worried about, and I think it was the view of, almost without exception, all of the witnesses, the medical witnesses in this hearing, that those risks have been grossly exaggerated, to the public.

20 As I said in the beginning, I think that this Commission can serve a very useful purpose in assuring the public that those are risks of not sufficient size for inordinate concern.

25 This Commission did not hear as much testimony on two other issues which I think are crucial to coming to regulatory outcomes, and that's the technological feasibility of achieving lower exposure levels in the work place, and the monitoring of work place exposures.

30 Nonetheless, we did present some evidence on those issues, and the Commission sponsored two, I think very good, research reports - one by Dr. Bragg...and actually I guess two by Dr. Chatfield...that discuss those issues.

5 MR. HARDY: (cont'd.) I think what Dr. Bragg found, which is consistent with industry's understanding of the issue of technological feasibility, is that achieving time-weighted average exposures in the work place of one to two fibers per CC, the current range of standards for this country, in Canada, in Britain, requires use of the best available technology, and that any lower standards would in effect constitute a ban on asbestos use.

10 Similarly, I think Dr. Chatfield reached conclusions which are consistent with that finding. Namely, he, as did Drs. Chase and Rhodes, when we presented their testimony, concluded that first of all the membrane filter optical microscopy method is the only presently practical method of occupational monitoring. Secondly, that this measurement device is not reliable in terms of quantification of exposure levels
15 below one fiber per CC.

I've learned a little bit more about monitoring for other substances in the last year or so, and I guess I used to think that asbestos was somewhat unique in this regard and now I guess I've learned that it's not, that for many chemicals you
20 have in exposure monitoring, when you are talking about very low levels, a limited detection below which you can't find the chemical, and then a limit of quantification which is somewhat above the level of detection. Between the limit of detection and the limit of quantification you may know there is asbestos there, but you can't be sure how much and therefore...and you
25 reach those limits because of both random and nonrandom variation in the measurement method...with asbestos and with the optical microscopy method, somewhere around one fiber per CC.

30 From a regulatory standpoint that's very important, because if you are going to set a standard with which companies must comply, in order to be sure that they are complying and they won't be found in violation of the law, they have to have

MR. HARDY: (cont'd.) a way of monitoring their compliance, as does the government in enforcing it.

5 With asbestos, with current technology, you are pushing the limits of that monitoring capability at about one fiber per CC.

10 I might just mention that the American Society for Testing New Materials, a body whose asbestos subcommittee happens to have been headed by Marcel Cossette from the Ontario Research Foundation, has recently issued a new asbestos standard updating previous standards that they have promulgated.

I have a copy of it if the Commission would like it, and they have confirmed that their previous two fiber per CC standard as the standard they thought was appropriate.

15 Moving outside the fixed work place, I think as the Chairman referred to this morning, monitoring does not provide a very useful means of controlling asbestos exposures, primarily because exposures in construction sites or in garages where brakes are cleaned, repaired, fixed, exposures are intermittent. I think there is probably very little likelihood in a good many construction activities or in garages that there will never be anything near a two fiber per CC time-weighted average.

20 To monitor would merely confirm that and to monitor would be very expensive and would fail to really look at the real issue, which is those intermittent peak exposures.

25 I think workers in those sorts of areas, because their exposures are not significant and not long-term may well face little real risk, but nonetheless there are means to effectively, and in some cases not very expensively, reduce and almost totally eliminate those intermittent peak exposures, and work practices, procedures, as the Chairman referred to them, are a very effective way of providing good regulatory control of those procedures.

5 MR. HARDY: (cont'd.) AIANA has been very active in the United States in trying to convince OSHA that it needs to issue a new construction standard on asbestos, relying on work practices which would be mandated and which would guarantee that in those times during construction when peak exposures occur the right procedures are used to prevent those peak exposures.

10 I know we have supplied the Commission with a copy of that proposal, and also summarized it in our briefs.

I'm also aware that the Ministry of Labour here in Ontario is considering that very issue. They have apparently decided, as I think we have, that the best way to handle asbestos in the construction area is through work practices.

15 There is, however, I think one significant problem with the proposal as it's coming from the Ministry of Labour, and that is by definition that standard applies wherever asbestos is on a construction site. There is no trigger level below which the standard doesn't apply.

It says:

20 "A hazardous work area is that part of a project where material containing asbestos is used, handled, dealt with, disturbed or removed"... which in effect means any time there is any amount of asbestos on a construction site, a long series of requirements applies.

25 I don't think that's a very practical approach. I don't believe it's an approach which is going to lead to total compliance at every construction site, because it's so impractical. I think in fact that the sort of work practice proposal the AIA has been submitting, which takes into account the different types of products, the different types of procedures which can be used with different types of products, to greatly reduce, if not totally eliminate, exposures is a
30 much more practical approach to the construction site.

MR. HARDY: (cont'd.) For instance, in cutting asbestos-cement pipe there are techniques of cutting it which, unlike an abrasive disc saw which can give very high peak exposures, gives almost no exposure.

To have the government validate that those practices work and then require that those practices and types of cutting procedures be used, I think is much more practical, pragmatic, likely to be followed as a procedure in construction.

I hope that the Commission and the Ministry of Labour can improve their proposed standard in that regard.

The net result, I think, of the sort of progress that has been made in fixed site asbestos manufacture and can be achieved in construction and other locations where asbestos is installed and used, will be very low exposures even for lifetime workers in the industry.

I think as has been shown through the technological feasibility studies and the monitoring studies, in order to comply with a one or two fiber standard any fixed-site manufacturing facility in fact must achieve much lower average exposures, and maybe on the order of ten lower because the variability of the monitoring process requires them to be achieving an average standard much lower to ensure that they are never above the standard.

In addition, in designing a plant it's the worst part of the plant that you have to focus the attention on, and I think inevitably processes used to clean up the worst part of the plant will have benefits throughout the plant.

Putting together the evidence that has been presented to this Commission on health monitoring issues, I think there's several things which grow naturally out...several recommendations which grow naturally out of that evidence, which AIANA would very much urge the Commission to make recommendations about.

MR. HARDY: (cont'd.) First, and I've already discussed it so I won't go into it again, is that I think changes need to be made in the Ministry of Labour's standard to make it a practicable, enforceable, effective standard.

Secondly, I think the body of evidence presented to this Commission fully supports the current one fiber per CC standard in Ontario as a technology-forcing, able-to-be-monitored, able-to-be-enforced and acceptably-safe standard in those work places.

Third, the asbestos industry throughout the world, in the United States and in Canada, agrees that most, not all, asbestos products should be labelled, information should be given to workers in the labelling of the products to enhance the chance that those workers will be aware of what they are working with and will take the proper precautions in working with those products, which will greatly minimize exposure.

Product labelling is a vital segment of any work practices approach. The labelling should clearly indicate that in cutting this pipe or in removing this brake, in brake repair work, that because this material, product, contains asbestos, special work practices should be used in dealing with it.

Finally, I think this Commission can serve a valuable function in putting to rest unfounded fears which often are generated that the population at large is being exposed to any risk of asbestos worth worrying about, and unfounded fears have been raised about school children which have led to considerable public dismay, considerable public expense, which I don't believe the witnesses...and which I believe the witnesses before you agreed cannot be justified on the medical evidence.

I believe most of these points are summarized, or I guess described more fully with notations to the record, in our written brief, and as I said before, if you have any further

MR. HARDY: (cont'd.) questions on that brief, or if I could bring you up-to-date on activities in the United States since we last met, I would be glad to answer your questions.

DR. DUPRE: Thank you very much, Mr. Hardy.

Mr. Hardy, do you have a last word of wisdom to leave with us on the fiber-type issue either from the standpoint of the health evidence or from the standpoint of the regulatory approach?

MR. HARDY: I don't know if my personal wisdom is very useful to you. I think, though, that what I found most striking about the overall testimony on that issue was that even those witnesses you heard like Julian Peto, who most stringently argued against there being evidence of a fiber type distinction, ultimately concluded that given the human experience there might well be justification for having a more stringent standard for the amphiboles.

He wasn't at all sure, and I think argued very strenuously, that it was because the fibers were necessarily different in their pathogenicity...it could well be because of the type of cloud, the dust that they create. We heard a lot about blue fiber being dustier.

I think the problem occurs in Ontario, given the way that I understand the distinction between fiber types is to be enforced, I think there was some discussion this morning about the fact that a point two fiber per CC level on crocidolite is effectively a ban on using crocidolite, and I think in terms of current manufacturing and monitoring capabilities, that's true. And as I understand from testimony I read from last summer, the Ministry of Labour intends to measure asbestos, if they know there is any crocidolite being used in the plant, the whole plant, all the fibers that are counted, have to meet the point two fiber standard.

5 MR. HARDY: (cont'd.) That seems to me to go farther than a legitimate difference, if one can be justified, between the fibers would permit. I would think that a person who
10 wanted to use crocidolite in his plant should be allowed through whatever monitoring techniques, and it might require some supplementary electron microscopy techniques, should be allowed to show that when the optical microscopy method is perhaps reading point eight, that also shows that there may be both a point two standard and a one standard for chrysotile because the crocidolite is such a small percentage of the total.

Certainly from a conceptual standpoint that's true, and I should think that there should be flexibility in the ministry regulations to allow for the type of monitoring which would demonstrate that in fact it's occurring that way.

15 DR. UFFEN: One question I would like to go back to. When you were talking about the work practices approach and you read out or quoted in part the regulations, I think you said something like this - that it must be implemented wherever asbestos is present, and so on, without regard for any minimum or lower limit. Have I paraphrased it?

20 MR. HARDY: That's right. That's the way I read the regulation.

25 DR. UFFEN: Well, now, again could we ask, how would you suggest that problem be dealt with? There are many buildings where it is known that there is sprayed asbestos and so on, and presumably legitimate ones to look into. There may be others that are unknown.

How would you suggest that that be done other than the ones that have already been put forward?

30 MR. HARDY: You are talking about in demolition activities as opposed to new construction activities?

DR. UFFEN: It's probably when people start to demolish the buildings sometimes they have large amounts of

DR. UFFEN: (cont'd.) sprayed, friable asbestos in them.

5 MR. HARDY: Right. I think the demolition issue is different from the issue of new asbestos products, and what I was referring to, I think it should be pointed out, was what sort of work practices, what sort of work practice scheme makes most sense in the use of new products in construction.

10 In demolition activity it is tougher, and quite frankly I have not figured out a solution for regulatory language which would indicate in a demolition situation what sort of asbestos situation has to exist to require what sort of controls.

15 This standard, I think, very much reads like a standard which is oriented just toward demolition activities, and my concern when I expressed it before, I should have been clearer, was that it doesn't work, though, as a standard, very well, for use of new construction, new asbestos products and construction.

I think demolition is a much tougher question to come up with a good trigger mechanism that's enforceable, that's usable in minimizing exposure.

20 DR. MUSTARD: I would like to come back to your comment about the level that you think asbestos exposure should be controlled at, and I got the impression from your presentation that you like one fiber per CC because you can measure it. That may not be what you would like me to interpret from it, but that was the measurement as part of the problem.

25 But supposing my technology would allow me to go down to levels below that and then you can find methods to establish that you are on levels below that and it was technically feasible in that even under the optical microscope you could monitor the lower level, or you could come in periodically with more sophisticated techniques and monitor and really through a
30 technique you are able to get down to point one fiber per CC,

DR. MUSTARD: (cont'd.) let us say. What would be your attitude about that?

5 MR. HARDY: Well, I think the first question that has to be asked, and the reason I went through the medical evidence first was, is there a risk at a level of one fiber or whatever level you want to ask, which is a risk so high that something must be done about it. If there is such a risk, then it seems to me then you have to talk about imposing costs to reduce levels more, which may include costs of monitoring and technological feasibility.

10 But I think it is a fair summary of the health evidence to conclude that the risk in a plant meeting the one fiber standard is not an unreasonable risk, and therefore in the broader sense whatever resources the society is going to use to minimize risks of all sorts of things should be extended to reduce other risks that are still greater than that which is posed through asbestos at one fiber per CC.

15 DR. MUSTARD: So you argue the one fiber on the basis of the risk, a minimal risk?

20 MR. HARDY: I think you have to. I don't think you can just say we can't monitor it, therefore no matter how dangerous it is there is nothing we can do about it. I don't think that is a reasonable approach. It has to be from a regulator's standpoint, from an overall societal standpoint, a combination of looking at the various factors which determine how society is going to expend its resources in reducing risks while nonetheless providing certain goods and services to its people.

25 DR. MUSTARD: Let me pose the question in another context within the dilemma of this sort of problem. Let us suppose that you are concerned about new substances and you do screening of them in nonhuman assay systems and demonstrate that

30

5 DR. MUSTARD: (cont'd.) a substance is a carcinogen. Now you face the dilemma of, let us say something that is useful, needs to be used, and now you face the dilemma of what to control it at, and now you are up against the technology versus known health effect. You have no known human health effects, but your technology says that you can control this at extremely low levels. Do you accept the argument there that you have to go to extremely low levels to control it?

10 MR. HARDY: Well, I gather from your hypothetical that you are worried that this is some risk, from the animal evidence?

DR. MUSTARD: That's right. There is an interpretation from...

15 MR. HARDY: And probably from the animal evidence you will have some idea of the level of risk. There is obviously an additional step when you assess risk based on animal evidence rather than assessing it based on human evidence - you have to interpolate from the animals to the humans - but nonetheless you have some idea of the risk.

20 It seems to me...I don't know that the decision is all that different. You have some of the risk, you have some idea of what you can achieve in terms of reducing the risk, and you ultimately face the judgement as to whether the risk can be reduced enough to justify the cost of what are needed to reduce it.

25 They are not easy questions. There are too many substances that pose those questions. I think you and regulators throughout the world are trying to grapple with them, and I guess just my feeling is that you just have to look at all the evidence in the best possible light and make tough decisions ultimately.

30 DR. MUSTARD: You also commented on the debate about banning asbestos. If I might pose it in a more general sense, can you think of any circumstance in which you would ban

DR. MUSTARD: (cont'd.) the use of a substance?

MR. HARDY: Well, sure...

DR. MUSTARD: Or would you...

5 MR. HARDY: ...well, I don't know about use of a substance. I think there have been some products, even asbestos-containing products, which have been banned in the United States. Consumer Products Safety Commission banned the use of asbestos in emberizing fireplaces, or some sort of use that clearly was not very important to society. The risk may have been very small, but nonetheless it wasn't worth taking that risk because there was no real usefulness for having asbestos in that product.

10 There are other products which have been banned in the United States because the conclusion was that this society should not be exposed to risks created because the benefits are not nearly great enough.

15 When you get to banning a substance, rather than the use of a substance in a particular product, I think that becomes much tougher. It seems to me it makes much more sense to look at 'can the substance be used in a certain way', manufactured, used and installed, to justify its use.

20 That's a much more reasonable way to look at the problem.

DR. DUPRE: Thank you very much, Mr. Hardy.

M. Bazin, M. DuPere is with you today, I take it?

25 M. BAZIN: Gentlemen, first of all I would also like to join the others that have done so, and on behalf of my partner and myself thank you and thank the members of the staff of the Commission for the help received throughout and the co-operation that we received all throughout this Commission.

30 I would like to introduce to you, Mr. Chairman and gentlemen, the president of the Canadian Asbestos Information Center, M. Jean DuPere.

MR. BAZIN: (cont'd.) M. DuPere is also president of Lake Asbestos, and former president of the Quebec Asbestos Mining Association.

We feel that at this stage of the proceedings it would be useful to receive the message of M. DuPere, who has just started as president of the Canadian Asbestos Information Center, and is, of course, intimately connected and involved in the industry.

M. Jean DuPere.

M. DUPERE: Mr. Chairman, gentlemen.

A few months ago, a company named Parket (phonetic) involved in the sale of foreign products, came out with an ad picturing a small child wearing a protective mask and sitting on a kitchen floor covered with tile containing encapsulated asbestos.

The caption below the ad was the following, and I quote:

"Beautiful practicality at affordable prices.
Successful conversion to vinyl flooring products without asbestos as an ingredient came about through a technological breakthrough.
Parket made a strong corporate commitment to research that resulted in that breakthrough".

End of quotation.

This was only part of the publicity that this particular company is engaged in and which it purports to justify in the following words, quote:

"Asbestos, a subject of vital importance, has been receiving a tremendous amount of publicity in newspapers and magazines, on radio and television. After a careful examination of this issue, Parket has discontinued the use of asbestos in all of its sheet vinyl and floor floor tile products. This decision was reached after analyzing

5 M. DUPERE: (cont'd.) "independent scientific studies which report health hazards resulting from exposure to excessive levels of airborne asbestos particles".

End of quotation.

10 Now, there is uncontradicted evidence that not one single fiber is omitted from the tile containing asbestos. Yet, this is how some people choose to twist and use scientific knowledge.

15 As I speak to you today, there are people who call themselves experts and they make the lecture tour frightening their audiences with the ghastly story of asbestos workers coming home at night and shaking out of their clothes millions of asbestos fibers onto unsuspecting wives and children, and others who seem to be unable to talk about asbestos without first showing the same slides that they were showing some thirty years ago - of asbestos workers stuffing asbestos fiber in bags with their hands and feet, thus allowing their audience to assume that this practice is still continuing.

20 We don't think that any self-respecting expert would dare use this atmosphere in speaking before their peers, let alone before this Commission. Yet, that type of story has been repeated the world over today, and shortly again we will have the doubtful benefit of viewing an English film called Alice - A Fight for Life, on a respectable television station called Public
25 Broadcasting Service, in the United States, and which is going to carry the story replete with inaccuracies, falsehoods and bias, based on facts, taking place in England, but which to its television audience will appear like true facts of life taking place in the United States or Canada.

30 It is indeed a pretty disgraceful piece of voyeurism on a very brave woman, favoring overreaction as opposed

M. DUPERE: (cont'd.) to a rational debate on a very complex problem.

5 In any case of lung cancer, one could find some exposure to asbestos. However, this doesn't necessarily mean that asbestos is always the cause. There are other factors for lung cancer, and notably cigarettes.

10 The present situation is that old people are living to a greater age than ever in man's history. Infections have been practically eliminated as cause of death, so that environmental and lifestyle causes are assuming greater importance. Our skills of pathology and epidemiology have so improved that the relationship between exposure and effect are now the subject of numerous studies, many of which are looking for evidence against asbestos, and in many cases finding it because of old exposure.

15 Negative findings are very rarely published because researchers and editors of journals very often are more interested in positive findings.

20 It is small wonder what little publicity was given to, for instance, the finding in the study by Dr. Jack Siemiatycki, an epidemiologist with the Armault Frappe Institute (ph) of Montreal, as a result of his studies conducted recently on the people living in the Asbestos region.

25 The results of this study now make it possible to state, among other things, that women living in the towns of Thetford Mines and Asbestos are experiencing no excess mortality due to asbestos exposure, and this notwithstanding the fact that these people are exposed to a higher concentration of fiber in the air and water than elsewhere, due obviously to the presence and mining of chrysotile deposits nearby.

30 Dr. Siemiatycki was able to point out that, and I quote:

"Despite the fact that these women have been exposed, most of them since childhood,

5 M. DUPERE: (cont'd.) "to an environment which may have been much more polluted with chrysotile asbestos than those reported in some major North American and European cities, they have not experienced mortality rates significantly in excess of Quebec rates.

10 The confidence limits would indicate that these results are certainly compatible with the hypothesis of no excess risk".

End of quote.

15 Like many other industrial, and even domestic and horticultural, products, asbestos must be treated with caution. Caution, but not fear.

If we know the nature of the hazard, we can take effective measures to reduce it.

20 We do not think that eliminating asbestos would remove the hazard. There is a lot of it about and we had better know how to handle it.

25 Replacing asbestos by new material is not necessarily the answer. Some of the alternatives are not without risk, and it would be foolish to create another hazard when we know how to deal with this one.

Public awareness and concern is a good thing, but overreaction is bad. The present hunger of some of the media for sensation leads to a climate of opinion in which overreaction flourishes.

30 We have been successful in eliminating death from infection by antibiotics and innoculation, but most people have come to expect miracles.

In the case of an agent which may take up to thirty years to produce its effect, there is no hope of a miracle.

The slow elimination of asbestos disease which

M. DUPERE: (cont'd.) has been going on for twenty years is clearly visible, but it can only be seen with a long, hard look and is invisible to a short-sighted person.

5 Gentlemen, I run a company, like M. Bazin mentioned, in Quebec, and we handle hundreds of tons of asbestos fiber every day, and those who have taken the time to visit our plant, and other plants in the asbestos belt in Quebec, will agree that our operations are clean.

10 I need not, I think, do more than mention the name of Dr. MacDonald for one, to say that we in the mining and milling industry have managed to control asbestos and make the work place safe for the worker, and that the population of the Thetford and Asbestos area is not at risk because of our mines.

15 But the challenge that the industry faces the world over is one that is much more difficult to meet, not because there is not the technology at hand to do so, but because of the lack of an objective and up-to-date analysis of the voluminous amount of data available to date on asbestos.

20 As your deliberations will have shown, asbestos is the only product in the world to have been the subject of so much research. Yet, there is still an urgent need for an informed and unbiased judgement on it.

25 This is why the Quebec Asbestos Mining Association in particular has welcomed the appointment of your Commission as being a unique opportunity for an objective body of men of science to fairly report on asbestos.

 The fact that your Commission was established in Ontario, and not in Quebec where the asbestos industry obviously represents a very important sector of our natural resources, gives the Commission added importance and objectivity.

30 We have followed your deliberations closely, and realized the extreme amount of care that you have taken in ascertaining that you are given an opportunity to hear all sides

M. DUPERE: (cont'd.) of the issue.

5 You have had an opportunity to hear all the experts the world over, and to sift the evidence. In effect, you have not been sitting just as a Commission gathering evidence, but you have been put, albeit not necessarily always willingly, in the position of a tribunal, as it were, hearing both sides of the question and having to come to a conclusion which we feel must be fair and equitable.

10 You have heard those who advocate the safe use of asbestos. You have heard those who say to you that so long as there is any possibility of a risk, no matter how remote, the use of asbestos should be banned.

15 You have heard the evidence establishing the value of safe work practices, and you will, I'm sure, compare those work practices with others that are permitted, when properly enforced, to continue with the use of other products equally as, if not more dangerous than, asbestos.

20 Industry has proven that encapsulated products will not, during normal handling and use, release asbestos fiber in excess of acceptable limits. For instance, packings and gaskets differ from the easily-crumbled, friable products used in the past.

25 Because friable products do have the potential to create airborne asbestos particles in excess of regulated limits during routine handling, the manufacture and sale of virtually all of these products have been discontinued.

30 In packings and gaskets, the asbestos fiber provides a reinforcing function, along with dimensional stability and high temperature and pressure resistance. Because the fiber is encapsulated by the binder, normal handling, fabrication and use would not result in the release of aspirable fiber.

For this reason, asbestos-containing packings and

M. DUPERE: (cont'd.) gaskets can continue to be used safely, providing a unique combination of cost and performance benefits.

This is true as well of the floor tile containing asbestos, where the Research Institutes and IRDA, which is directed by Dr. Dunnigan, has shown beyond a shadow of a doubt that the use of asbestos-containing floor tile is completely harmless both in its installation and use.

It is important to note that we now know more about the potential health effects of asbestos and ways to use this material without risk than we know about many potentially hazardous and toxic materials. Because of the vast wealth of information on safe work practices that are available to the person using asbestos-containing products, it is, in a very practical sense, potentially safer to use this product than many of the substitute materials about which little is known.

Mr. Chairman, Mr. Commissioners, the responsible and enlightened society does not casually reject a material that in a large number of applications cannot be validly replaced, and offers numerable advantages. Such a society exercises control, imposes regulations, sets standards to ensure that everything is done to reduce all risks to the lowest level allowed by modern technology, modern equipment and modern technique.

Such a society equips itself with the means of investigating, inspecting and evaluating the effectiveness of the measures taken in the work place and in the environment, and with regard to product safety.

The asbestos industry is not asking for, and neither does it expect, special favors. Should it be established that certain asbestos-based products present a socially unacceptable risk, not only its marketing, but its manufacturing, must be prohibited. If producers, manufacturers or users fail

M. DUPERE: (cont'd.) to apply the appropriate control procedures and technique, thus exposing the workers to excess risk, they must be dealt with severely.

Now, we'll go even further. If substitute products are developed and if after technical testing from every standpoint as rigorous as for asbestos they offer the same advantages with regard to performance, quality and reliability, and if it is established following scientific and medical research as extensive as in the case of asbestos that these products present no risk either now or in the future, it goes without saying that the asbestos industry shall have no other choice but to bow to the inevitable.

However, it has not yet come to that. Far from it. Today, as I said earlier, nowhere in the world is there a substance used in the manufacturing of substitute products that has been subjected to scientific, medical and technical testing and research for quite so long or as intensively as asbestos.

The sum of current knowledge on the biological effects of asbestos and the risk levels, chemical mutations during processing, the means of controlling fiber emission during processing and manufacturing and of suppressing them in the products, is a concrete indication that in 1983 there is nothing comparable to asbestos from the standpoint of identification and mastery of the risk affecting human health.

Obviously, it does not follow that research should be abandoned or vigilance relaxed. The reduction and the elimination of risk within the limits of the humanly possible must be a constant objective which will only be achieved through continual scientific and medical research and technological innovation and development activities which, moreover, must stand as cornerstones for the developing of the standards and regulations that shall govern asbestos.

5 M. DUPERE: (cont'd.) This being said, and considering the absence of well-supported scientific and medical data on the biological affect of substitute products, legislation and regulations worthy of a responsible, fair and equitable society must demand the same guarantee, impose the same rules and apply the same high standards to the production and use of mineral fiber, synthetic fiber and other substitute products as to the production and use of asbestos.

10 What we ask of the legislators and the regulators, regulatory bodies, is that they recognize the progress made in the last twenty years in resolving the problems relating to asbestos, and in developing techniques and products that are in every way the equal, as regards safety, of thousands of products that are used daily and that no one would ever think of questioning.

15 This is why we are looking to you to set the record straight, and are putting our hopes on the findings of the Commission to be regarded as they should, given the extreme care that you have taken in analyzing the evidence, as the proper guidelines for regulating bodies.

20 The industry I represent unreservedly supports the principle of applying standards and regulations that would govern asbestos and its users. What is more, it recently took the initiative of setting up a Canadian Information Center devoted to promoting the safe use of asbestos, and one of the essential tasks of this center being to make countries still without laws and regulations of this nature aware of the importance of doing so without delay.

25 We are hopeful that your Commission will help us to demonstrate that while it is unacceptable to expose asbestos workers and users to a risk that modern technology and equipment have enabled us to eliminate, or gain, to market products whose safety has yet to be established, it is equally irresponsible

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5 M. DUPERE: (cont'd.) to adopt regulations strictly based on paranoid fear and on ambiguous extrapolations regarding the dangers of asbestos.

10 What we ask in as much as the objective of the laws and regulations is to protect the workers from the public, and not to destroy an industrial product at the expense of another industrial product, is that asbestos be viewed in terms of the potential and the limitations for its safe use today, and not in terms of the conditions under which it was produced and used twenty-five, thirty or forty years ago.

15 To sum up, Mr. Chairman and members of the Commission, our industry is eagerly awaiting your findings. It is our hope that it will provide the Canadian Asbestos Center with an objective and balanced analysis of what asbestos is all about, and help the center reach its objective...the adopting of safe methods of handling asbestos throughout the world, so that people can work with asbestos and not have an unjustifiable fear of it.

20 To you, this may not seem much to ask for. To us, it is of crucial importance given the challenge we face the world over.

I thank you for your kind attention.

DR. DUPRE: Dr. Uffen?

25 DR. UFFEN: Yes, I would like to ask you one... I would like to take advantage of the fact that you not only represent the industry, but you operate a mine, and you know that we visited the area and have some recollection of what we saw.

30 There is a great deal of debate that hinges around one fiber per CC. We have referred to it many times today, can it be measured, etc.

Are you able to achieve one fiber per CC by regular

DR. UFFEN: (cont'd.) monitoring, in your own mine?

5 M. DUPERE: Given the present state of technology, it would be...to maintain on a constant, continuous basis...it would be quite impossible to achieve at this stage, in a mill as opposed to...I'm not talking, obviously, of a manufacturing plant.

DR. UFFEN: I mean mines and mills.

M. DUPERE: Yes.

10 DR. UFFEN: But you do achieve two?

M. DUPERE: Yes, we do. And there is no doubt that with time and whenever technology becomes more available and more refined and sophisticated, the aim is to reduce it, irrespective of any given standards, to the lowest possible norm.

But we have to depend on existing technology.

15 DR. UFFEN: Are there parts of the year, times of the year, or any periods, where you are able to achieve one fiber per CC, and times when you can't do it?

20 M. DUPERE: I wouldn't put it exactly...well, that's one factor, and obviously it relates to the elements and it's very difficult to control precisely, but what I can have is that in any mine or any mining facility we have many stations to do the sampling of the ambient air, and there is no doubt that in many of those stations we achieve the one fiber limit...mostly on a constant basis...except that there are other parts or sectors or locations in the mine that it's virtually impossible, today, given what is available, to control as much as in other places.

25 Also, obviously there is always the mechanical breakage and the power failure and that kind of thing that will very temporarily, because it's very accidental, cause the limit beyond one.

30 But it is possible to achieve it in some sectors

M. DUPERE: (cont'd.) of the mine, but overall there are some places which it now cannot be attained.

DR. DUPRE: Dr. Mustard?

(no audible response)

I wonder if I could ask you, M. Bazin, or your colleague, whether the Quebec Asbestos Mining Association has any last word to leave with us on the question of the relative hazardousness of asbestos at different stages of processing?

M. DUPERE: To sum up how we would view the variances of different processes, for us - we are miners as opposed to manufacturers - and there is no doubt that the methods of regulating the ambient air and the working conditions and the risk differ completely from one place to the other, simply because of the very nature of the operation.

When we are talking of a mining or milling facility - because mining is open pit and therefore there is no problem there - but in the mill, every part of the mill serves the process of producing raw fiber, so your effort must be applied at all levels of your operation.

In a factory, the possibility of exposure to asbestos fiber is obviously much more restricted to the receiving end, or the preparation or mixing part of the facilities, and obviously being restricted in area, we would think, makes it easier to control.

M. BAZIN: It's difficult to find the last words of wisdom, Mr. Chairman. I just simply point out it has been the experience in the mines in the Province of Quebec that regardless of the process and regardless of where you want to identify where the process has gone and where the evolution is going, because the workers are unionized they have been going all over the mill, basically - going outside, bumping inside, there have been some layoffs - so the individuals, the workers

5 M. BAZIN: (cont'd.) have not been sitting in one space for twenty-four years, so the analysis is really difficult as the influence on the worker by the nature of the labour relations existing, so for individuals I don't think there can be any distinction whatsoever.

Then, of course, you look at various positions and maybe then you can establish something, but it would be extremely difficult.

10 DR. DUPRE: Just to make sure my question is fully understood from a regulatory standpoint, does the Quebec Asbestos Mining Association have any last word of wisdom to leave with us on the extent to which regulatory standards should or should not be more stringent as you move from mining to milling to manufacturing through spinning, etc.?

15 M. DUPERE: Mr. Chairman, that was the point I was trying to badly make a minute ago. There is no doubt that there is a big difference between manufacturing and milling.

20 Mining shouldn't be a problem - we are talking open pit here. There is no concentration even if we are talking, at the pit we are talking of removing rocks and waste rock, so the level of exposure is barely in existence in the mill... in the open pit area.

25 The mill, obviously, is the place where we must emphasize more care and implement more measures. If you want another element where it is a cause of concern, the crusher, for instance, in the mine could be a problematic area. But the main distinction if you are talking in terms of standards is between the mine and mill per se, and a manufacturing facility.

30 We like to say often to handle ten tons of fiber per day should logically represent an easier task, in terms of controlling the environment, than manipulating a thousand tons of fiber per day.

5 M. DUPERE: (cont'd.) I'm sorry. Again, you are talking about various facets of the process. To give our personal experience, if we are talking of the latency of the disease, given the fact that an employee over his life or over his career will go from one place to the other in a mill... we now have been in business for twenty-five years this year. Half of the three hundred and forty-odd employees that are with us are still with us, that we hired initially, with no prior exposure anywhere. None of them is affected by asbestosis or other pulmonary disease.

10 So if you control your environment, you will not expose your workers.

15 M. BAZIN: Mr. Chairman, the question related to mining and milling as compared to manufacturing in the regulatory process. I think the evidence and the reality of the process show that from a regulation point of view it's possible to make a distinction between mining, milling, and manufacturing on the other hand. I think it points in that direction. There could be a difference.

20 DR. UFFEN: Could we take advantage of your knowledge and experience, then, and go one step further about the mining practice. My understanding of the situation in Quebec is that you may very soon have to go underground in some of the properties, the pits are getting very basic...I've forgotten the geology of the area...and in Ontario we have potential mining properties - I don't know how much of it would have to be underground.

25 Can you offer comments about how effectively you can manage the underground mining operations, as distinct from open pit?

30 M. DUPERE: That is a little more difficult for me personally, because we operate two mines in Quebec, and they

5 M. DUPERE: (cont'd.) are both open pit. Now, I'm not by trade a professional miner, and in Quebec at the moment we only have one mine which is an underground operation, and I wouldn't like to comment in the way that would be incorrect insofar as they are concerned, but I think there shouldn't be any problem because the ventilation...it becomes a question of ventilation the same as in the copper or other mining.

M. BAZIN: They meet the standard.

10 M. DUPERE: And it's wet, it's wet.

DR. UFFEN: That's a big point. Most of the mines are wet, am I right? In Quebec, they are soaking wet? The ones we were in.

15 M. DUPERE: It's embarrassing, and I don't want to be embarrassing anybody because when you are talking open pit, it's true, Mr. Commissioners, we have part of the year when the mine is very wet. But in the summer, the opposite is also equally true, when we have a very dry period, and we have to provide wetness through our equipment.

20 DR. DUPRE: Thank you very much. M. Dupere and M. Bazin.

Mr. Lederer?

25 MR. LEDERER: Mr. Chairman, Dr. Uffen and Dr. Mustard, may I begin by joining my friends in thanking you for your patience throughout these proceedings, and in particular on behalf of Mr. Edwards and myself may I thank you for your patience having particular regard to our late involvement in this matter, and I know the particular problems that that may have caused and the particular need for patience that that may have caused for all of you at certain times.

30 I don't intend to be terribly long this afternoon and I wish only to make a few general comments, and I would like to begin, if I might, by referring you to a comment that Ms. Jolley

MR. LEDERER: (cont'd.) made this morning.

5 As I understood the thrust of her remark, it was that this Commission had succeeded in accomplishing what the government of the Province of Ontario desired in that it had successfully removed the issues that are before this Commission from the public eye. That is, in my respectful submission, a regrettable perception. It is wrong.

10 The purpose in promulgating this Commission was not to avoid the problems that confront us having regard to the use of asbestos in society, but rather to deal with those difficulties.

15 I would have thought from the tremendous amount of evidence that has been called before this Commission, having regard to the complex issues that that evidence has raised, having regard to the areas of controversy that remain, having regard to the difficult problems that need to be dealt with, it would have been clear that a commission of this type is justified, that this kind of independent examination was required.

20 Mr. McCombie, in his remarks, referred to the government as 'the other side'. I deeply regret that perception.

The central thrust of the Occupational Health and Safety Act, the central thrust of the regulatory process that the government of the Province of Ontario has been engaged in, is to protect the worker. It is that that the government wishes to achieve.

25 To the extent that Mr. McCombie's comment reflects on the government's concern, attitude and conduct before this Commission, I regret that perception as well and I suppose my regret is touched with a certain personal involvement.

30 Unlike some Commissions, it has not been our view that we should, on behalf of the government of Ontario, take a partisan position, trying to defend a particular point of view.

5 MR. LEDERER: (cont'd.) Rather, Mr. Edwards and myself have seen our role as providing this Commission with the information that it required in order to assist in preparing the report, which will in turn assist the government in dealing with the complex series of issues raised by the subject matter of this inquiry.

10 We have seen our role essentially as one of facilitating communication between the staff and the public servants involved, and ensuring that the information you have requested is properly forthcoming, and that the witnesses called have been prepared to respond to your questions, to the questions of all counsel, and to the questions of those others present.

15 With this role in mind, I'm not going to present you now with a list of proposed recommendations as Mr. Starkman has done, or indicate to you a particular view of approaches that should be taken. The whole purpose of this Commission is that the province seeks your help in resolving those issues.

20 We believe that the evidence that has been brought forward through the various government employees and public servants that have been called here should be helpful. We certainly hope that it is.

We have tried to be responsible...responsive, sorry...to all requests that have been made by you and by the members of your staff.

25 In dealing with the evidence that has been called through these various government officials, Mr. Starkman referred to the quality of the people, referred you to that.

30 Now, I'm not entirely sure as to what he meant by that, but I'm quite clear on what it implies and it's a most unfortunate implication. The people that have been presented here, that you had asked to come here and give evidence, are responsible people, people who are committed to deal with this difficult situation, and we would certainly hope that when you

MR. LEDERER: (cont'd.) come to deal with their evidence and to consider these problems that you would recognize the sincerity of their efforts.

5 Mr. McCombie, in dealing with that issue, was...I don't think I'm underestimating him if I say he was more emotional in his attack on the people involved. He used phrases like 'dark secrets', references to 'medieval guilds', 'paranoid fetish for secrecy'.

10 These comments are unfair and they are unjustified. It's easy, easy to be critical. It's easy to draw on the well of emotionalism which surrounds issues like the problems that confront this Commission.

15 With respect, it's not so easy to be the responsible authority that has to attempt to deal with the issues and to balance the problem.

20 As Mr. Starkman observed, the people from the Workmen's Compensation Board, by way of example, who were called here, were really an array of the top people with that institution - people who have concerns and who have the interest in this problem.

25 I'm told by Mr. Edwards that during the course of the evidence called by the Workmen's Compensation Board that there was some reference to the difficulty in interesting people in making it a career to look at these problems, to investigate and to deal with them. The people that you had here are the people that have that commitment, and again I think it's regrettable that there should be any aspersions cast upon that commitment.

30 A substantial part of your consideration and a substantial part of what has been said here today have dealt with the area of health effects, and I don't intend to say anything substantive concerning that part of these proceedings. Many of the issues raised complicated scientific and technical questions. If the answers were known, the answers were accepted, there would

MR. LEDERER: (cont'd.) be no need for the provincial government to have promulgated a commission of this type to deal with them.

Again, the province asks for your help in resolving these concerns and in reasonably dealing with them in the future.

Words of caution are undoubtedly not necessary from me. However, for the record let me observe that to the extent that these questions remain matters of controversy for the scientists directly engaged in their investigation, it would be difficult and, if I may be so bold, it would be unwise for this Commission to attempt to definitively determine those issues, or to make recommendations which, if acted upon, might make it difficult for a government to respond to new developments as knowledge increases.

What the government seeks, I believe, is an ordering, an understanding of the current state of knowledge, and guidance as to how to deal with these issues given that knowledge and prospective developments in the future.

The Commission has also heard a great deal of evidence concerning the areas in which government is more directly involved, particularly the areas of regulation and enforcement.

The Occupational Health and Safety Act, and the programs and the regulations set up under it, are relatively recent. They represent a dramatic step forward in the provincial government's efforts to deal with the problems of occupational health and safety. We are very early in the process, and like all new developments these need time to properly evolve.

Miss Jolley said that she...or that labour at the outset had had high hopes at the beginning for the internal responsibility system. I think it's a matter of considerable

MR. LEDERER: (cont'd.) regret that she is
apparently prepared to consider giving up on that effort so
early.

The recent history of government action in this
area and the need to allow a proper evolution should be balanced
against any of the criticism which is easily launched against
any new procedure or program.

We dealt with this in part, I think, in the
cross-examination of Mr. Girdouskas, who I believe Mr. McCombie
referred to this morning. For this new system to function,
old, adversarial relationships between management and labour
would have to change, or at least be refined, when these
participants come to act in this particular area.

The parties will, to a large degree, need to
work together. As I said at the outset, the thrust of the
legislation, the thrust of the Occupational Health and Safety
Act is shared responsibility.

Again, I don't think I'm overstating the case to
say that Mr. Girdouskas agreed that, conceded that, attitudes
on both sides will have to change. He clearly said that in his
experience at the Hearne Generating Plant, attitudes are
changing.

Those involved, hopefully, are learning that
an instinctively confrontational attitude may not be the best
approach. It is, of course, true that there will be disagreements.
It is the natural, and in my respectful submission, the appropriate
role for government to be involved in resolving those
difficulties.

Professor Dorn has pointed to the role of
government within that process as the role of the arbiter or
the umpire. Again, the fundamental thrust of the Occupational
Health and Safety Act is to protect the worker. The method is

MR. LEDERER: (cont'd.) shared responsibility... shared between the worker, between industry, with government as the arbiter.

5 That system, it would be my view and my submission to this Commission, requires an intrinsic balance, a balance of responsibility or even perhaps, to use Mr. Starkman's words this morning, a balance of power.

10 If you are persuaded by either labour on the one side or industry on the other to move too far, to one extreme or to the other, the system fails. It falls out of that necessary balance. In effect, control is passed to the benefited extreme or the benefited side.

15 If control, in effect, is given in that sense, then the government cannot perform its natural function as arbiter. If, by way of example, the views of Mr. Sass are adopted, could there be said to be a proper balance where government can perform its specific role, or does control shift to the one extreme?

20 If these matters are simply left to be dealt with by industry, subject as they are to market pressures and the profit motive, can the balance be maintained? Or is there a shift in control to the other extreme?

25 Our fundamental submission is that we agree with Professor Doern that the role of government is as arbiter in a system of balanced responsibility, which is the intent and thrust of the Occupational Health and Safety Act, and which we would hope would not be too easily cast aside so early in its development.

30 As important as these issues are, and as tragic as the history is, when the government comes to consider your recommendations there will be a need to assess the context in which the occupational hazards occur in this province.

That is, the government will, in a pragmatic

5 MR. LEDERER: (cont'd.) world, have to balance the danger and risks and allocation of resources required by your recommendations against its other responsibilities in many other areas of society.

You'll see, if you review the transcripts, that I discussed that briefly with Dr. Walker, Mr. Hardy has touched on it earlier today.

10 I do not, however, want to be misunderstood. This is an important problem. With all due respect again to Miss Jolley's comment concerning the reason for this Commission, it is my submission to you that the appointment of this Commission and the ongoing work regarding asbestos regulation shows that the province recognizes the importance of these issues, and shows its desire to get on with appropriately dealing with them.

15 Obviously, then, it would be helpful if this Commission was also, based, of course, on the evidence, to consider the context of these issues and make its recommendations with a view to the nature and the degree of the difficulties that the issues raised here involve.

20 I only want to touch briefly on the area of compensation. We have heard evidence from many people involved in the compensation procedures for claims for injuries and disease arising in the occupational setting. I would remind you of the comment made by Dr. Kotin that the workmen's compensation procedures in this province are superior to those in the other areas in his experience. There have been criticisms raised as to the specific procedures adopted by the Board. Again, the Board's procedures are evolving. New and special programs have been attempted.

25 We hope that the Commission will recognize the constructive, positive and again sincere efforts that have been made to deal with the various problems confronting the Workmen's Compensation Board, and that any recommendations made will

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MR. LEDERER: (cont'd.) recognize the positive nature of those efforts, and the many successful aspects of its programs.

Mr. Chairman, Dr. Uffen and Dr. Mustard, that really concludes my comments. May I only say that, again with apologies to Miss Jolley, that while I suspect this is the eighth inning for us since we need now only wait to receive the report, I suspect it's only the end of the first inning for you. I think you have a hard task in front of you, certainly not one that I envy.

Thank you.

DR. DUPRE: Thank you.

Counsel? Dr. Uffen? Dr. Mustard?

(no audible response)

I have no questions of Mr. Lederer.

Well, this concludes our final round of submissions, is that correct, counsel?

MR. LASKIN: We've heard, Mr. Chairman, I believe, from all of the parties that are represented in this matter, and I believe that two of Mr. Starkman's clientele may wish to address you, I understand very shortly, and then I suppose with your leave I ask on behalf of Mr. Starkman and on behalf of, I believe it's Mrs. Dodds and Mr. Cauchi, that they be permitted to address the Commission briefly.

DR. DUPRE: By all means, counsel.

Mr. Cauchi?

MR. CAUCHI: Thank you very much, Mr. Chairman and members of the Commission, for allowing me to express my views at the last minute, but I think there's a few happenings that developed within the last while that you should be informed about. In fact, one of the speakers this morning mentioned Dr. Vingilis and his resignation.

MR. CAUCHI: Well, for your information, Dr. Vingilis is still operating at the same premises, at the same job, every Monday.

Another development that happened within the last six months is that we had an understanding with the occupational health chest disease branch that after we're examined at the occupational chest disease section at 50 Grosvenor Street, the report goes to our physician.

Now, on June 21st, I received a letter from management of the Manville Canada Limited...that's after my time... that:

"Please make special note that the attached correspondence from the Ministry of Labour regarding the processing of x-ray reports taken at our clinic spring and fall..."

And the doctor's notation at the bottom of the letter, which says:

"It will be the responsibility of those attending this clinic, both now and in the future, to follow the procedure as outlined."

It means that if I want to get my report from the occupational health branch about my chest examination, I have to get it from the company physician or the company nurse.

This letter was addressed to all retirees and long-term employees, and I'm not working there no more. Some of them didn't even know the doctor or the nurse in the plant.

I brought this up last Monday with the writer of this letter, Dr. Roose, who was the physician in charge of the pulmonary function testing, and the reason he gave me for going this route instead of the route that we started in 1975, is that if they have to send letters to everybody's doctor, it is costing OHIP twenty-five dollars apiece. By sending it to the company physician, they are saving the twenty-five dollars

MR. CAUCHI: (cont'd.) because people usually don't ask for their report.

5 During my discussion with him I failed to find how my family physician was only charging me twenty-five dollars, or OHIP twenty-five dollars, when I am already there to be examined anyway, and it's going to be part of the proceeding, part of the visit.

10 The understanding still is, as of last Monday, that after I have my examination at 50 Grosvenor, I have to notify A. Belos, R.N., (phonetic) the plant nurse, if I want my report that I been examined at Grosvenor, and I find that very hard to believe.

I don't want to pursue it any further than here.

15 Another thing that transpired during the last recess, during proceeding of the Human Resources Commission in Queen's Park, Dr. Keith Fitzgerald, the Scarborough medical officer of health, stated to the committee of the legislature that he was unable...that he was unable to obtain medical records of ex-Johns-Manville employees.

20 The reason given to him is - because they were sent to Denver.

I find this, my people, when we would like to have our medical records checked by our physician from the company from time to time, I find that it's very unfortunate that the medical records didn't stay in Canada where they belong.

25 I would like to, at this time...I'm not an expert on any of the comment that was made during the two and a half years of proceedings...but I'm sure an expert on my twenty-five years involvement in working with asbestos, and I would suggest and recommend to the Commission to obtain a true definition of what it means to be suffering from asbestos dust effects.

30 I would also suggest at this time that the

MR. CAUCHI: (cont'd.) Commission, in their submission to the government, insist that no physician from the chest disease clinic can be a member of the ACOCD.

In some discussion this morning about the guidelines that is operating out of the compensation board - how you qualify and how you don't qualify - we heard testimony here by Dr. Nicholson stating that the twenty years latency didn't mean it as a Bible.

Well, I have a report of that, in fact, when it was sent to Dr. McCracken in the first place. We had one widow lost three appeal hearings because her husband only worked seventeen years in this business, and she was disqualified because he never had the twenty years as the guidelines state.

Now, this information was obtained from Dr. Selikoff. Dr. Selikoff and his group wrote to Dr. McCracken and advised him that it usually takes twenty years, but it 'usually' takes twenty years.

Dr. Nicholson and his group are saying to you people in here, when he testified, that it could be two years, it could be one year, but usually take twenty years. So because Dr. Selikoff and his group say it usually take twenty years, Dr. McCracken says twenty years and no less.

In the meantime, the same widow lost her house.

I just finished hearing here that we keep seeing the same movies and the same old slides. I just saw the same old slides, Mr. Chairman, about the Corbett Asbestos, how it is...how there is no harm done to the workers or the neighbors.

First I saw it in 1967, by the late Dr. Cowie (phonetic). About two years later, Dr. Selikoff and his group went into the same area in Thetford Mines, and they find out that sixty-one percent of those workers examined had some kind of lung abnormality.

5 MR. CAUCHI: (cont'd.) The only thing that has changed since this Commission started was the minister. Everything is still the same, or worse. I'm sorry to see him go. I had better relations....

10 Now, according to the news, you know, that's one thing about reading or hearing the news is that you don't have to be walking the streets or up at work, you can be in bed and you can still read the news or listen to the news, and I'm very fortunate that I'm addicted to reading, and every bit of news that comes out with regard to Johns-Manville, I'm ready for reading it.

15 But it seems within the last two, three years we are on the same wavelength - the asbestos victims of Ontario and the Johns-Manville Corporation, which is now called Manville Corporation, with regards to compensation for all the victims of past neglect, and yet in Ontario we are still fighting, these few victims...and I say few victims for the reason, Mr. Chairman, that when we started in October of about 1980, we had a hundred and ninety people attending the first meeting...and I'm sick and tired of all these funerals.

20 I know all of them had twenty-five years service, Mr. Chairman, I guarantee you that. I never seen a guy with twenty-five years service at the Johns-Manville plant that didn't had some type of abnormality. You could verify that by getting the records straight from the occupational chest disease branch.

25 We just finished hearing here Mr. Lederer saying that the compensation in Ontario is not the best, but it's not the worst either.

30 I talked to the widows today, they just got their raise. It brought them up from four-fifty to five hundred dollars and some.

5 MR. CAUCHI: (cot'd.) Well, the maximum pension for a spouse in Alberta is thirteen hundred and seventy-five dollars. That's effective January 1, 1981...1981, thirteen hundred and seventy-five for a pension spouse.

We're getting a lot of them, Mr. Chairman, as you can see. There are about sixty-one more widows today than you had five years ago, and in your report I hope that these widows will get finally their say.

10 Another thing that bothered me during the proceedings is the people that were called up. They couldn't recall, they couldn't remember. I don't know how come such educated people, such as plant managers, doctors and stuff like that, can't recall or couldn't remember when you question them.

15 I went to grade six and I can remember the first day I started at Johns-Manville.

I would like to bring to your attention, Mr. Chairman, to read the report when Dr. Stewart is on the stand. You recall Dr. C. Stewart, he is the chest disease specialist at the Compensation Board.

20 He stated that he did not remember when the lung function test started for GM workers, and the ratings started in Ontario for dust diseases in 1966, and he started them. No one else in the world would give you ten percent or twenty percent for being sick. In Ontario today, the government of Ontario today allowed the Compensation Board to give you a hundred percent compensation for breaking your index finger - stay home, don't drive the car or do whatever you want, and you get hundred percent compensation. But if your lungs is suffering from asbestos dust inhalation, you won't get nothing. Or if you have some type of disease, you get ten percent or twenty percent, it's rated.

30 It's beyond me and it's beyond our group, because

5 MR. CAUCHI: (cont'd.) as was told to me by a specialist, you are either pregnant or you're not, and when you are sick with your lung disease, you are sick and there is no two ways about it, and no percentage should be given or should be thought of to these people.

10 The asbestos industry claim that they are interested in safety and the new technology, and are sure that people working in the industry today are not at risk. However, they are not interested in justice for the people who worked for them before.

I never seen a guy yet on the stand up front here saying to the Commission, give these people what they deserve. There's only a few left, let the poor bastards die in peace.

15 Thank you, Mr. Chairman, for your patience in listening to my remarks.

DR. DUPRE : Thank you.

Mrs. Dodds?

MRS. DODDS: Thank you, Mr. Chairman.

20 Mr. Chairman, members of the Royal Commission, ladies and gentlemen. I am Odette Dodds, and some of you may know me.

Let's get right to the point. I am here because I want to point out something to you, and these are the facts. I have studied the ritual that Johns-Manville uses for inducting members to its Quarter Century Club. This mentions achieving a goal. The company sure did.

25 Let me quote:

30 "To you let me say that yours are accomplishments realized only through the exercise of patience, understanding, co-operation and courage. You have not insisted that the world owes you a living. You simply have wanted the world to give you an opportunity to live and to make your own careers. Unlike some, you have not attempted to destroy

MRS. DODDS: (cont'd.) "what others have built so that might profit thereby. Rather, you have built for yourself".

5 End of quote.

Built for yourself? And then what? Half of these men were sick before they reached retirement age. The other half did not survive much longer.

10 The most recent example - one of my dear friends, a steady worker, seldom absent, worked for the company for almost thirty-two years...a member of the Quarter Century Club. Thus, he and his mates listened to the quote I just mentioned, probably with much apprehension. He was on early retirement with so far only ten percent compensation.

15 Today, as of January 13th, he has no need for this any longer, but his surviving widow who stood by him through the years could do with a full widow's pension.

As you know, she is not the only one. He could not even benefit of the nine percent increase in benefits for the Injured Workers, something we, as a group, had worked for.

20 Prior to his passing, three times more, just before Christmas, the Johns-Manville flag was forced to go half mast. Now it is too late for those men, but we are here to improve the situation.

I count on your co-operation.

25 Mr. Chairman, members of the Royal Commission, if I may there is something else I would like to point out to you. The gentleman did not receive his December, 1982 early retirement cheque from Denver. The cheque was sent January 11th. The gentlemen received the cheque January 13th, the day he died.

Rest in peace. We won't forget you.

Thank you.

30 DR. DUPRE: Thank you, Mrs. Dodds.

5 DR. DUPRE: (cont'd.) Now, may I first of all thank the parties for their last submissions today, and state that we greatly appreciate the complimentary remarks that were made to our counsel in particular, our staff in general, and point out that we are not for a moment going to join the parties in expressing gratitude to our staff because we haven't finished using them, completely, yet.

10 Now, we are well along in our deliberations, quite far along in our drafting. I would, in this connection, like at this point to articulate our thanks to the parties not only because they shared so many of the long hours in this room, but because as we go through the thousands of pages of testimony that we have accumulated it is very clear to us that the parties
15 spent their time in cross-examination here most productively indeed, and are helping us to unearth and try to piece together the kind of evidence which we hope will make our report worthwhile.

20 Now, in terms of this report and whether or not it's going to be worthwhile, that of course I'm going to leave to others to judge, just as from the very beginning this Commission left for others to judge the quality of the parentage or otherwise of this Royal Commission.

25 However, given all the time that has been invested in this Commission, given all the effort that has been put into it and contributed to it by so many people, I will say one point, make one point, which is that this Commission is not going to sacrifice the quality of its report for the sake of one month more or two months more or less in terms of how much time it takes to get it to the printer.

30 Commissions are invariably criticized from the time they are created, they are criticized for various reasons while they are underway, they come under criticism towards the end because they have not reported last week, next month or the

DR. DUPRE: (cont'd.) two months after.

We are quite prepared to live with whatever is out there, so long as we have ensured ourselves that our report is worth what all of you have so very much put into it.

Now, that means that I cannot translate, and I don't think it would be in any way fit for me to translate, what this means in setting our deadline in terms of a month, but I would say at this point that it would be the latter part of spring, or it could be the very early summer before we go to the printer. We shall just have to see.

But we are well along, and indeed being as far along as we are have that much more reason to be thankful in particular to all the parties with standing for the effort that is now even more apparent when we review the transcript and the quality of the evidence that they helped elicit through their questioning.

So may I thank you all very much, and I will take it, counsel, that all of us here will never see the gentlemen behind this counter as a Royal Commission again, because of course, as you know, we disband at the time our report is submitted.

So thank you all very much.

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THE INQUIRY ADJOURNED

THE FOREGOING WAS PREPARED
FROM THE TAPED RECORDINGS
OF THE INQUIRY PROCEEDINGS

Edwina Macht

EDWINA MACHT

